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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 373

CHARLOTTE CROSS JUST AND ANNE ELISE
GRUNER, PETITIONERS,

vs.

ALMA CHAMBERS, AS EXECUTRIX OF THE ES-
TATE OF HENRY C. YEISER, JR., AS OWNER OF
THE AMERICAN YACHT "FRIENDSHIP II"

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 24, 1940.

CERTIORARI GRANTED OCTOBER 21, 1940.

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October 8, 1937, 7:30 P. M.

Theretipon: CARL BLOUNT resumed the stand and testified further as follows:

Re-Direct Examination.

By Mr. Parmer:

Q. Do you remember the last night that you were telling about how you were holding that hose on that test that the chemist was making down in the boat?

A. Yes, sir.

Q. And how you had a rag around the joint so you would not burn your hands; do you remember that?

A. Yes.

Q. I want you to tell us in greater detail just how you proceeded to put that hose on there and to put the rag on there, so that the chemist could go ahead.

A. To make this test we took a hose and we butted the end of the hose up against the exhaust pipe, and in doing that the water would come out around it, so I got a rag and this was wrapped around the hose, and then with this rag around it we held the hose firmly against the pipe. That was to keep this water from seeping on my hand and burning it. I pushed it right up against the pipe, and the chemist was there. To get this where this

489 exhaust was coming out through this hole we held that pipe so that that would come out there and this rag naturally got wet.

Q. When did it get wet?

A. It got wet while I was putting it on there; it was wet by the time I got it mashed up there firmly. We had the motors running while we were putting this hose on there.

Q. What do you mean by "getting it mashed up firmly?"

A. Firmly against the pipe so the water couldn't leak out and get in the bilge.

Q. How did you do that?

A. I put my hand right around the hose and brought it up with the rag.

Q. That is, pressing the rag against the copper pipe?

A. Against the exhaust pipe.

Q. When you got it mashed up firmly did any more water come out on the rag and onto your hands?

A. No, sir.

Q. When did you start timing the experiment?

A. After we got this hose fastened right so the exhaust would come out of it.

Q. Could you feel the exhaust coming out of it after you got hold of it?

A. Yes, you could feel the shaking from the explosions in the motor.

Q. Now, Chief, do you remember an occasion in September of 1935 when one or two of the sons of Mr. Yeiser were overcome by gas on that boat?

490 A. Yes, sir.

Q. Do you remember that?

A. Yes.

Q. Did you see the boys at the time?

A. I didn't see them right at the time.

Q. Did you see them afterwards?

A. Yes, sir.

Q. As a result of that did you receive any orders?

A. Yes.

Q. What orders did you receive?

A. I received orders to check the exhaust pipe and where this trouble was coming from.

Q. Did you check the exhaust pipes?

A. We gave them an inspection, yes.

Q. What inspection did you give them?

A. We started up the motors looking for leaks and then we took all of those hatches up, the flooring up, and got under there, and we saw there wasn't any leaks at all in there.

Q. And this was in September, 1935?

A. Yes, sir.

Q. Did you make any report of that at the time as to what you found on that inspection?

A. I made a report to the Captain and to Mr. Yeiser that we could find nothing that was wrong with the pipes.

Q. You did?

A. Yes, sir.

Q. Now after that did Mr. Yeiser give you any
491 instructions with regard to the use of the room
down below there?

A. Yes.

Q. What instructions did he give?

A. He gave instructions that whenever the boat was running and anyone was using the room, to keep the back windows closed.

Q. Why?

A. On account of the fumes coming in from the outside.

Mr. Mehrrens:

We object to the answer and move to strike that part of it which attempts to relate why Mr. Yeiser gave these orders, unless Mr. Yeiser told him at the time the reason.

(By Mr. Parmer):

Q. Let's find out. Chief, did Mr. Yeiser tell you the reason at the time that he wanted the windows in the back closed?

A. Yes.

Q. Because of the fumes coming in from the outside?

A. Yes.

Q. You mean the fumes formed on the outside from the end of the exhaust pipe?

A. (No audible answer.)

Q. Now do you know whether thereafter that practice was followed of keeping the back windows closed?

A. Yes, sir.

Q. That is, when the boat was running?

A. Yes, sir.

Q. Did anyone else take part in this inspection
492 of the exhaust pipes at that time?

A. No, sir.

Q. You made the inspection?

A. Yes, sir.

Q. Did you look through the entire length of both exhaust pipes, port and starboard?

A. Yes, sir.

Q. And found no leaks at all?

A. No, sir.

Q. No leaks at all?

A. No, sir.

Mr. Mayne:

That was in 1935, is that right?

Mr. Parmer:

September of 1935.

Mr. Mayne:

Thanks.

(By Mr. Parmer):

Q. What about that part of the pipes which were under the engine room; did those have any leaks?

A. They were probably defective.

Q. What is that?

A. They were probably defective but they were not leaking, that is, they were not leaking outside into the boat.

Q. Why was that?

A. Because I kept it wrapped.

Q. What did you keep it wrapped with?

A. Tape. That was visible.

Q. You could see that?

A. Yes, sir.

Q. At times would the tape show a leak?

493 A. It would.

Q. What would you do when a leak would appear?

A. I would re-tape it.

Q. At the time that these women were on board, Mrs. Just and Miss Gruner, were these exhaust pipes or that part of them in the engine room, leaking then?

A. Not that I know of.

Q. In the course of your work on that trip didn't you have to be in the engine room?

A. Practically all of the time.

Q. Did you ever observe any leaks in the engine room?

A. No, sir.

Q. If there had been any leaks at that time and gas came into the engine room, would you have noticed that?

Mr. Mayne:

We object to that as calling for a conclusion of the witness.

Mr. Parmer:

I will qualify him.

Mr. Mayne:

All right.

Q. Had you observed leaks from exhaust pipes before? I will put it another way; have you been in rooms where exhaust pipes have been leaking?

A. Oh, yes.

Q. On those occasions has it been to the extent that gas fumes have been coming into the air in the room where you were?

The Court:

I think the objection is to the question of his former experience with gas leaking. Probably you
494 should reframe your question.

Mr. Parmer:

Thank you, your Honor.

(By Mr. Parmer):

Q. Were you in a position, while you were working in the engine room on this trip, to see and notice leaks in the exhaust pipes in the engine room, if they had been there?

A. Yes, sir.

Q. Now from the time in September that you examined these exhaust pipes, September, 1935, up until the time in March, 1936, when this voyage with which we are concerned principally took place at about what rate did you have to pump your bilges?

A. Not very often.

Mr. Mayne:

We object to that and ask that it be stricken out.

The Court:

The objection is sustained.

Q. Will you tell us, Mr. Blount, about how often?

A. Well, maybe every two weeks or something like that; it would just vary; the boat wasn't leaking, and there was no water in it.

Mr. Parmer:

I will consent to strike that out.

Mr. Mershon:

That is all right. Let it go in.

(By Mr. Parmer):

Q. Was the pumping of the bilges about every two weeks the normal rate for pumping bilges over that entire period?

A. Yes.

Q. Is that about it?

A. Yes, sir.

Q. At any time during that period did you
495 have to pump your bilges more often than that?

A. No, sir, and sometimes it was longer than that.

Q. Now at the time after you came back to Miami, after this voyage on which Mrs. Just and Miss Grunow were passengers had ended,—after that voyage had ended, and you looked into the bilge in order to see whether the pipes were leaking, what was the condition of the bilges at that time in relation to the amount of water in them?

Mr. Mershon:

We object to that, because it has not been shown that he looked in the bilges immediately after the voyage to see if the bilges were leaking.

Mr. Parmer:

I thought we proved that last night. I will withdraw the question.

Mr. Mershon:

If your Honor please, we object to that question unless it is so framed as to include Roderick in it. The question

is too indefinite and refers only to when this witness looked into the bilge.

The Court:

I will sustain the objection. I think that question is unduly prolix.

(By Mr. Parmer):

Q. Were you there when Mr. Roderick came down and examined the pipe?

A. Yes, sir.

Q. Did you join with him in looking for leaks?

A. Yes, sir.

Q. Now at that time did you observe the condition of the bilges as far as the amount of water in them was concerned?

A. Yes, sir.

496 Q. Will you tell us what that condition was at the time; how much water was in them?

A. There was some but very little.

Mr. Mayne:

We object to that and ask that it be stricken.

The Court:

That is a matter of cross examination. You can develop that further.

(By Mr. Parmer):

Q. Do you know at that time how deep the bilges were, that is, the bottom of the bilges below the floor of the state rooms?

A. On this particular boat there would be no water back under the stateroom. I always looked at my bilges from the engine room forward on the bow—

Q. On the engine room forward?

A. Yes.

Q. At this time when you looked at the bilges—

A. When we were making that inspection we had all of the hatches up and we looked all along through the back part of the boat and you could see down by the engines, and you could see just whatever was in the bilges anytime you wanted to glance down and look at them.

Q. I want to know how deep the bilges were at this time that you and Roderick were examining the pipes, if you can tell us in inches and feet.

The Court:

How deep the water was?

Mr. Farmer:

Yes, how deep the water was.

A. Well, in the center of the boat you would have a little water that would be deep, but there would
497 be hardly no water in it.

Q. In the center?

A. Yes. Right down by the keel, that is, up forward before you get aft of the boat, the boat flattens out and there is practically no water at all aft, but in the engine room I would say four inches of water was probably in the bilge, but not aft of the dining room.

Q. Do you mean that it would be less than four inches aft of the dining salon?

A. It would run out to nothing as you went back.

The Court:

I don't know whether he is speaking of a normal condition or not. State the depth of water in the bilge on this particular occasion, according to your best recollection; not what was usually in there, but how much water was there at the time you and Mr. Roderick made the inspection.

The Witness:

Right where the motors in the engine room were or—

The Court:

In the bilges or where the pipes came out from the engine room back to the stern of the boat.

The Witness:

Your Honor, that would be hard for me to answer.

The Court:

Where the water was naturally deeper than any other place, how deep was it there on that occasion?

The Witness:

I would say four inches, probably five inches.

Mr. Parmer:

And where was that depth?

498 The Witness:

In the engine room. There was a small amount under the dining room, probably two inches, and about where this leak was in the exhaust pipe that was further back, which is practically ten feet back, and there was hardly any water back there.

(By Mr. Parmer):

Q. In other words, the farther forward you went the deeper the water got?

A. Yes.

Q. Was that condition of the bilges at normal?

A. Yes, sir.

Q. It was at normal?

A. Yes. That means like "normal" or "at normal."

Q. You don't know those words?

A. I asked so I would be right about it.

Q. Do you know what "usually" means?

A. Yes.

Q. Was that usual or unusual?

A. It was usual; it stays about that depth.

Q. Well, now, Mr. Blount, between the time that you examined these pipes, that is, exhaust pipes, in September, 1935, and the time you examined them again in March of 1936, did you have any knowledge that these exhaust pipes were leaking?

A. No, sir.

Q. Did any of the other inspections which you made from time to time take you into the vicinity of the place where you found a leak in March of 1936; do you understand that question?

A. Yes, sir.

Q. Will you tell us what your answer is to
499 the question, if you understand it?

A. Yes, sir.

Q. Is your answer "yes, sir"?

A. Yes, sir.

Q. Tell us what work you had to do which would take you into the vicinity of these exhaust pipes in the place where you afterwards found the leak.

A. The bearings at the propeller shaft ran in there, and in order to oil them I had to take them out and oil those places. We oiled them probably once a month when we were running a great deal.

Q. And between September, 1935, and March, 1936, were you in fact running a good deal?

A. Yes, sir.

Q. You say you had to look at these propeller bearings about once a month?

A. Propeller shaft bearings.

Q. I see.

A. Once a month or every six weeks.

Q. Where would you have to go in order to oil these propeller shaft bearings; describe it for us so we can understand.

A. It is under the floor; it is under what we call the bilge of the boat.

Q. You would have to crawl through the bilge?

A. Didn't crawl through it, but we would have to get down and reach over with an oil can and grease the bearings.

Q. Where would you be when you were doing
500 the work of reaching down?

A. Well, I would usually stand down in the bilges and probably reach over in another section and put the grease in or oil.

Q. In order to get down so you could stand in the bilge would you have to take any of the flooring up?

A. Take the hatches up; it was all made in sections. You could lift a whole center section out all down through the boat.

Q. Would that have to be done in order to stand in the bilges?

A. The sections had to be taken up to get to these bearings.

Q. While in that position were you anywhere near that section of the exhaust pipe in which you afterwards found a leak, that is, in March of 1936?

A. The pipes ran parallel with the shafts.

Q. How far away were they from the shafts?

A. Probably two feet; it varied, you know; sometimes it would be close and sometimes farther away.

Q. When it was close how far would it be?

A. Probably a foot.

Q. When it would be farther away how far would it be?

A. Probably two feet.

Q. How many propeller shafts did you have?

A. Two.

Q. Did they both run parallel to each other?

A. Yes, sir.

Q. How far apart were they?

A. The two shafts?

Q. Yes.

501 A. The shafts are about five feet apart, I suppose.

Q. About five feet?

A. Yes, sir.

Q. When you say that the exhaust pipe was at a distance varying between one foot to two feet from a propeller shaft, do you mean it was about that distance from the propeller shaft which was nearest to it?

A. Yes, sir.

The Court:

He didn't say there were two exhaust pipes; he said two propeller shafts.

Mr. Parmer:

I understand that, but I am trying to make a record on it.

The Court:

All right.

(By Mr. Parmer):

Q. Now at any time while you were in the bilges during this period between September, 1935, and March 2nd, 1936, in the course of doing this work, oiling the propeller shaft bearings, did you observe any leak in the exhaust lines?

Mr. Mayne:

Up until what time?

Mr. Parmer:

The time was limited up to March, 1936.

Mr. Mayne:

What time in March?

Mr. Parmer:

Well, we will make it March 2nd.

The Court: .

I think the time is included in the question. Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. No, sir.

Q. On those occasions when you were doing
502 this work, during the time I mentioned before,
did you look at the exhaust lines?

A. I couldn't help but look at them, but I didn't make a thorough inspection of them.

Q. That is, you didn't get a full view of them?

A. No, sir.

Q. How far away were they from your eyes?

A. Not over four feet; at the most three or four feet.

Q. Have you any recollection of how long before March 2nd, you went into the bilges for the purpose of oiling the propeller shaft bearing; have you any recollection of that?

A. No, sir.

Q. Well, I think you said that your ordinary course was once a month and at the outside once every six weeks?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Did you have to do that work for the proper running of the vessel?

A. Yes, sir.

Q. You had to keep these things oiled?

A. Yes, sir.

The Court:

Was the engine running and the shaft turning when you did the oiling?

The Witness:

Sometimes they were and sometimes they were not.

503 (By Mr. Parmer):

Q. Mr. Blount, on the morning when the vessel arrived in Miami after the trip with which we are concerned; that is, on March 2, 1936, do you know who it was who called Dr. Howell?

A. I do.

Q. You do?

A. Yes.

Q. Who?

A. I did.

Q. How did you call him?

A. By 'phone.

Q. Did you speak to him?

A. Yes, sir.

Q. How long after you called him did he come down to the boat?

A. Just a few minutes.

Q. A few minutes?

A. Yes, probably thirty minutes.

Q. Now on the afternoon of March 2nd, while Miss Grunow was still on board the ship, did you buy any liquor?

A. Yes, sir.

Q. What liquor did you buy?

A. One quart of Johnny Walker.

Q. Who gave you the money?

A. Mr. Yeiser.

Q. What did you do with that liquor?

A. Carried it up on deck and delivered it to him.

Q. To whom?

504.

A. To Mr. Yeiser.

Q. And where was Mr. Yeiser when you gave it to him?

A. He was on the after-deck.

Mr. Parmer:

That is all.

Mr. Mershon:

If your Honor please, we move to strike the last three questions and answers as to this witness buying liquor with Mr. Yeiser's money and giving the liquor to Mr. Yeiser, as being irrelevant and immaterial.

Mr. Parmer:

I ask that it remain until I connect it up.

The Court:

Do you expect to connect it up?

Mr. Parmer:

I expect to, and I will consent to it being stricken if I do not.

The Court:

All right; I will grant the motion subject to it being connected up.

Mr. Mayne:

Of course it is in the record for all purposes.

The Court:

I do not see the materiality of it, but we will leave it in subject to it being connected up.

Mr. Mershon:

I would like to inquire if counsel has finished his examination of this witness.

Mr. Parmer:

Yes.

Mr. Mershon:

Is this the complete direct examination of this witness or do you expect to call him for further direct examination. I am asking that question before we undertake to cross-examine.

504 The Court:

That is my understanding; that he has completed his direct examination.

Mr. Parmer:

My direct examination has been completed, but after my friend gets through with his cross, I hope I may be able to—

Mr. Mershon:

Have you finished your direct examination?

Mr. Parmer:

I believe I have. It may be that I have overlooked something that I do not recall at the present time.

Cross Examination.

By Mr. Mershon:

Q. Chief, when the Friendship II is proceeding under way with both her engines turned up to 500 to 550 revolutions per minute, and there is no head wind and no tail wind and a calm sea, what speed does she produce?

A. I would say eight miles.

Q. Eight nautical miles or eight land miles, do you mean?

A. It probably would not be eight nautical miles.

Q. You mean eight land miles rather than eight knots?

A. Yes.

Q. That is per hour?

A. Yes, sir.

Q. Would there be any difference in the speed whether she was turning 500 or 550 revolutions per minute?

A. A little, yes.

Q. Would it vary as much as half a mile an hour?

A. Probably would.

Q. Would that be about the variance; if not, what do you think would be the difference in speed?

A. I could not say; there would be a little
506 difference.

Q. What was the usual and ordinary cruising speed of the Friendship II in revolutions?

A. 550 was what we usually ran; 550 revolutions per minute.

Q. And that is what you gauged her speed by as far as you were concerned, by revolutions rather than miles?

A. Yes, sir.

Q. Have you given further thought to the question that was asked you last night as to whether the Friendship II towed these two fishing boats down the bay when she left here about February 28, 1936, on this memorable voyage?

A. Going down?

Q. Yes.

A. I don't believe you asked that question going down.

Q. I did not, but I am asking you now and you can tell us now whether you towed the two boats behind the Friendship II going down the bay.

A. I really don't know whether we towed them or not.

Q. Do you remember whether you operated one of these fishing boats while the Friendship II itself was at anchor on that trip down the bay?

A. Yes, sir.

Q. Did you go aboard that fishing boat and start it, start the motor when you got down the bay?

A. Yes, sir.

Q. Do you recall whether that fishing boat was towed back to Miami by the Friendship II, do you
507 remember that now, the one that you operated?

A. We usually towed it back to the—I believe we run it back at least a part of the way.

Q. Which part of the way would that be?

A. That was the morning coming in, the morning of March 2nd.

Q. Do you remember distinctly that when you came up to the Royal Palm Dock those two boats, extra boats or fishing boats, were not being towed behind the Friendship II?

A. Yes, sir.

Q. They were not connected with or being towed by the Friendship II when the Friendship II came into the port of Miami and docked at the Royal Palm Dock; you are positive of that, are you?

A. Yes, sir.

Q. On the trip back when, if at all, were these two fishing boats towed by the Friendship II coming from Angelfish Creek?

A. On Sunday night if they were towed; I couldn't answer that.

Q. You don't know whether they were towed at all coming back?

A. No, sir.

Q. If they were not towed who ran them back?

A. The mate.

Q. What is his name?

A. H. C. Mickle.

Q. So, Chief Blount, you are here stating positively then that on the morning of March 2, 1936, being Monday morning, when these two young ladies were found unconscious in their bunks, this mate, Mr. Mickle, was not aboard the Friendship II but was aboard this other boat coming up separately. You make that statement, is that right?

A. Yes, sir.

Q. When the mate, Mr. Mickle, got aboard the fishing boats to run them into Miami from that trip, what did you do?

A. Then we left Featherbed Shoals that morning.

Q. Did he sleep aboard the Friendship II or did he sleep aboard the two fishing boats that night?

A. He slept aboard the Friendship II.

Q. Did he leave ahead of the Friendship II or behind?

A. That I couldn't say; I don't know.

Q. You don't know whether the Friendship II got in first or the other boats got in first?

A. No, sir.

Q. Which was the faster, the two fishing boats or the Friendship II?

A. The fishing boats were the faster boats, and when they were running them they stayed along with the big boat.

Q. But you don't know when they got in on that day, March 2, whether it was before the Friendship II got in.

A. No, sir.

Q. I believe you stated last night that you thought Mr. Yeiser acquired the Friendship II in May, 1933. I will ask you if you are not mistaken about that, and if it was not in May, 1934. Now you figure back and see which you think is the right date, 1934 or 1933.

A. To be frank with you, I don't know just when he did acquire it right now, that, is to remember the time.

Q. Where was she when you first went aboard as engineer?

A. At Fogal's Boat Yard.

Q. In Miami, Florida?

A. Yes, sir.

Q. Who negotiated to employ you; was it Captain Roberts?

A. Yes, sir.

Q. You live at Fort Myers, do you not?

A. Yes, sir.

Q. And Captain Roberts also lives there in Fort Myers?

A. Yes, sir.

Q. Had you ever served with Captain Roberts as engineer before that time?

A. Yes.

Q. How many years?

A. Well, I had been with Captain Roberts since the 1st day of December, 1929, up until the 8th day of October, 1936, and the time was on the Friendship I and Friendship II.

Q. Now, Chief, you spoke of a period between September, 1935, and March 2, 1936; that would cover the winter of 1935-36, would it not?

A. Yes, sir.

Q. How many other winter months or seasons had Mr. Yeiser owned and operated the Friendship II prior to that time; was it just one or was it two prior to the winter season of 1935-36?

A. One I guess.

Q. Just one?

A. Yes. That is prior to 1935?

Q. That would be the season of 1934-35. So he must have acquired her in May, 1934, rather than in May, 1933?

A. That is probably right.

Q. Was Mr. Yeiser on board when you first went on board at Fogal's Boat Yard?

A. No, sir.

Q. What time of the year was it when you went on board at Fogal's Boat Yard; was it in May, 1934?

A. I would not say; I would not say it was in May; I don't remember just when we did get that boat or when Mr. Yeiser got the boat, but I was on the boat before they bought it and looked it over and things like that.

Q. Before they ever bought it?

A. Yes.

Q. Before Mr. Yeiser bought it?

A. Yes.

Q. From the time you went on board the Friendship II at Fogal's Boat Yard did you continue to remain as engineer until at least March, 1936?

A. Yes, sir.

Q. Chief, tell us now in your own words how much time Mr. Yeiser spent on board the Friendship II; what parts of the year and to what extent he lived on the Friendship II from the time he got her in 1934 up until March 2, 1936? I might predicate that by way of explanation upon your statement that you were engineer on board during all of that time.

A. It is hard to remember those times, when anyone is coming and going.

Q. Do you remember?

A. I can remember fairly well the last.

Q. Well, all right, suppose you start with that.

A. Mr. Yeiser came aboard in September, on the night of the 1st of September, 1935.

Q. All right.

A. He was aboard the boat up until the holidays, Christmas holidays, and he was off for a period there and his family used the boat, and as soon as they were off he came back on the boat and at that time he stayed

until his death. There were two days that he was off, or three or four days, and that was along when his son died on the 13th day of October, during that time.

Q. Had Mr. Yeiser laid the boat up during the summer of 1935, prior to September 1st, when he came aboard?

A. She was being put in condition.

Q. When did he get off of her, in the spring of 1935 or the summer of 1935, as the case may be?

A. He left about one month after he bought the boat, possibly a month after he bought the boat. Now to get the date of that I would have to look the records up as to when he bought it.

Q. How much time did he spend aboard the boat during the winter of 1934-35, that is, the winter preceding this accident?

A. I could not say, but not as much as he did this last winter.

Q. Did he spend considerable time on it?

A. Yes.

Q. And he had his quarters there and just lived on the boat?

A. Yes.

Q. You stated on your direct examination that Mr. Yeiser had a young son or two who was overcome by carbon monoxide on the Friendship II. Do you recall that occasion?

A. I remember when he was brought out of there and he was sick.

Q. Was it just one child?

A. There was two of them.

Q. Two of them overcome and brought out?

A. One of them didn't notice it so much, and the other one was a little hazy about it.

Q. Who brought them out?

A. I don't know.

Q. Where were they brought out of?

A. Out of the aft-stateroom.

Q. Where the young ladies were later found unconscious?

A. Yes, sir.

Q. Did you see the children?

A. Yes.

Q. Was that a boy that was knocked out or a girl?

A. Neither was knocked out, not unconscious.

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Q. Suppose you tell me about it. Tell us what you saw and what happened.

A. They just went back to take a rest and one of them went to get up and when he went to get up he kind of fell over on the floor and said he felt bad, and his brother was laying on the other bed and someone woke him up and they came on the outside.

Q. What time of the day was this?

A. I don't remember.

Q. Was it in the afternoon?

A. I don't know.

Q. Where was the boat; was it tied up at the dock?

A. No, sir.

Q. Where was she?

A. It was running.

Q. Whereabouts?

A. I don't know that.

Q. Was it in Biscayne Bay?

A. I don't know.

Q. Were you aboard?

A. Certainly.

Q. You were the engineer in charge?

A. Yes.

Q. Who brought them out of the stateroom, the children?

A. I don't know.

Q. Who else was aboard on that occasion; was Captain Roberts aboard?

514

A. Yes.

Q. And who else?

A. The rest of the crew.

Q. The same crew that was aboard when Mrs. Just and Miss Grunow were brought out unconscious from the same stateroom in March, 1936?

A. I don't know, whether they were all there, but most of them were.

Q. You were asked if that happened in September, 1935. Was it at that time or was it in December, 1935, when Mr. Yeiser's family were aboard the yacht that the two children were overcome by gas?

A. It was in September, because it was when we first went out on the boat.

Q. And what other members of Mr. Yeiser's family than the two children were aboard?

A. He had a doctor, a druggist from Cincinnati, with him as his guest.

Q. What was that doctor's name or druggist's name?

A. Dr. Geisler.

Q. Was Mr. Yeiser also aboard?

A. Yes, sir.

Q. Mr. Yeiser was a divorced man, was he not?

A. That's the way I always thought he was.

Q. It was his divorced wife and their children who were aboard during the holidays in December, 1935, when he remained off the boat?

A. Yes, sir.

Q. What interest did Mr. Yeiser take in the operation of the boat when he was aboard and you were cruising; what did he do on or about the boat?

A. He would read.

Q. Would he go to the wheel-house and talk to the Captain and help him lay out the course and direct the route they were taking?

A. They would talk about it.

Q. Did you ever see him hold the wheel?

A. Sometimes for short periods; very short, though.

Q. As a matter of fact he was somewhat interested in navigation and had already gotten some kind of papers for himself?

A. I don't know, but I know he was interested in navigation. I don't know nothing about the papers, except the ones he was studying.

Q. He was studying navigation?

A. He did for a little while anyway.

Q. Was he interested in the motors and the engineering part of it?

A. Very little.

Q. Well, did he ever discuss them with you? I am not talking about the exhaust pipes. Don't get nervous, because we have not reached that point. He never came into the engine room and sat down and talked to you and watched the motors run?

A. Very seldom.

516 Q. That means that he did occasionally?

A. Well, he would come around occasionally, but very seldom.

Q. Did he ever come in the engine room and sit down there and talk to you about the operation of the engines and the operation of the boat?

A. I don't believe he did.

Q. You don't believe he ever came into the engine room at all?

A. Sure he would come in there, but we didn't talk about operation of the motors.

Q. What did he talk about when he came in there?

A. Most anything.

Q. Did he look at the motors at all?

A. I guess he would.

Q. Did he ever ask you any questions about them?

A. No, sir.

Q. Never asked a single question about these motors?

A. He probably asked me some, but there was nothing about the running of them or anything.

Q. This piece of the starboard exhaust pipe, Exhibit No. 1, was sitting right up in the engine room above the floor and connected to the engine room, wasn't it?

A. Yes, sir.

Q. And it was connected to the first engine that you came to as you stepped through the door in the engine room, wasn't it?

A. Is this the starboard one?

Q. Yes, the starboard one.

A. Do you mean the motor right in front of
517 the door?

Q. Yes.

A. That is the starboard motor, the first one.

Q. Now, when you come through the door in the engine room the first motor you see is the starboard motor?

A. Yes.

Q. And the exhaust pipe was between where the starboard was located and the entrance to the door, wasn't it? You tell me where the starboard port pipe was with reference to the door and the starboard engine.

A. Where this piece was (indicating)?

Q. Yes.

A. This goes on the back of the motor.

Q. All right, suppose you hold it and tell me how it hooked on to where it was supposed to connect with relation to the door of the engine room.

A. This pipe is fastened right onto the manifold of the motor, just like this, and this comes out and is fastened onto the pipe that went out the stern of the boat. This is the starboard exhaust pipe. That other part there is the port exhaust pipe.

Q. Where would the door be that you came into the engine room from—

A. Relative to the position of this pipe (indicating)?

Q. Yes.

A. It would be about seven feet.

Q. In which direction?

A. Right straight ahead.

518 Q. Could you come into the engine room and look at these motors without seeing that starboard pipe which you are holding here, Exhibit No. 1?

A. When we are handling motors and everything we stand right back here (indicating).

Q. Was this patch on this starboard motor during all of these times?

A. What times?

Q. All of the times that you were chief engineer on that boat.

A. No, sir, not all of them.

Q. Was this hole in this exhaust pipe patched in some fashion or other on the outside during all of the time you were chief engineer on the Friendship II?

A. It is possible that there were some patches on it.

Mr. Parmer:

I move to strike the answer on the ground that it is not quite responsive to the question.

Mr. Mershon:

If you can get an answer that is responsive, I will appreciate it.

The Court:

Let's proceed. The motion to strike is denied. That is a matter of re-direct examination.

(By Mr. Mershon):

Q. You stated that after these children were overcome by gas in the after-stateroom in September, 1935, that you were ordered to check the exhaust pipes. Who gave you those orders?

519 A. Mr. Yeiser or the Captain one; I don't know which; I always did what the Captain told me to.

Q. You say Mr. Yeiser did not order you to do it or do you say he did?

A. Probably not directly but indirectly.

Q. Do you remember at all, Chief, whether Mr. Yeiser ordered you or not?

A. Not positively; I don't know whether he did or didn't.

Q. You don't know whether it was Mr. Yeiser or Captain Roberts?

A. No, sir.

Q. Were you in Miami or Fort Myers when you made that inspection in pursuance of those orders?

A. We were somewhere between here and Fort Myers; I don't remember the location of where we were at.

Q. Did you get the orders immediately upon finding the children overcome by this gas?

A. Within that day probably, yes.

Q. Did you make the inspection within that day?

A. Either that day or the next.

Q. You don't know whether you made it while you were in port or while en route?

A. No, sir, or laying at anchor.

Q. Since you have been engineer on that boat has anyone else been overcome to your knowledge by this carbon monoxide gas, either overcome or affected by it?

A. Not so bad; I don't know of anyone, no.

Q. Well, has anyone else been affected to any extent at all by it to your knowledge?

A. Well, it was just understood on the boat
520 that in that room—of course this is not the question you asked me—it was understood on that boat that after that when we ran the boat that it was necessary for us to keep these windows closed, and that was all the crew and every one of us sailors; every one of us knew to keep those windows closed, but it was done from these boys falling like they did.

Q. Mr. Yeiser ordered it done?

A. Yes, sir; when there was anyone sleeping in there at all and we were running they were ordered that the back windows be shut.

Q. Now, Chief, will you please answer directly and positively my former question: whether anyone to your knowledge on that boat, Friendship II, was affected slightly or otherwise by exhaust gases during the time you were on her as engineer, including yourself?

A. Yes, sir.

Q. Now, who was affected?

A. Well, Captain Johnson and myself.

Q. Who is Captain Johnson?

A. He is a fishing guide.

Q. Both he and you were affected by gas from the exhaust on that boat?

A. Just slightly.

Q. Do you know of anyone else?

A. No, sir.

Q. Now, Chief, if you do not remember where
521 you made this inspection of the exhaust pipes after Mr. Yeiser's children were overcome, do you remember the details of the inspection that you made and what you did?

A. Just what we could see with our eyes and sounding with a small hammer, and using a light all the way through it; we had a good light.

Q. Do you mean a flashlight?

A. I didn't take the wrapping off or anything from the pipe, that is, this asbestos or anything like that.

Q. Did you go below and lay out on the floor of the bilge?

A. No, sir.

Q. And look up?

A. No, sir. But you could stick your head down and see the pipes all the way through; you could see them from one end to the other, that is, from the bulkhead back to where they came up through—

Q. When was the tape, the present tape, as it now appears on the starboard exhaust pipe, Exhibit 1, placed there?

A. I couldn't say.

Q. Did you put it on there?

A. Yes, I put it on there.

Q. Will you please illustrate how that pipe connected with the engine and what part of it, if any, rested upon or toward the floor?

A. That part (indicating).

Q. How far was the taped part of the pipe
522 above the floor of the engine room?

A. This piece (indicating) was right above the floor, and this was open right back behind there, and you could see on back a little bit further than this here (indicating).

Q. Well, now, did you know that this tape had split and was open all the way through under the bottom of that pipe at any time?

A. Well, if it did, we would just replace it, which would stop this water coming out of that.

Q. You would wait until you saw water coming out and then you would undertake to retape it?

A. Yes.

Q. Would you just put more tape on top of the old tape, or take the old tape off and put on a new tape?

A. Put more tape on.

Q. You mean by that that the water would come out of the exhaust pipe and leak through the tape and when it reached that stage you would put new tape on?

A. If it run out, yes.

Q. You stated that you had been in rooms where exhaust pipes were leaking. Will you tell us when and where that was?

A. In the engine rooms.

Q. On what boats?

A. This one here and I believe on quite a few; I just don't recall which ones.

Q. Now, Chief, you stated that the Friendship
523 II had done quite a bit of running about between September 1, 1935, and March 2, 1936. I will ask you when the Friendship II came over to Miami prior to March 2, 1936; when did you come over from Fort Myers?

A. You mean after the 1st of September?

Q. Yes.

A. Probably the last of September, or the 1st of October we got in to Miami.

Q. Didn't the Friendship II stay in Miami then from practically October 1 to March 1, 1936?

A. No; we had been back to Fort Myers during the time, and also down on the Keys and cruising around.

Q. In January and February, 1936, where was the Friendship II?

A. Sometimes it was in Fort Myers and sometimes it would be between Miami and Fort Myers. I know that in January we were in Fort Myers.

Q. How long had the Friendship II been in Miami prior to this trip on February 28, 1936?

A. You mean tied up to the dock or—

Q. I mean, porting here or being here, basing here or docking here, or whatever you might term it?

A. Probably a month, I would say; we checked in and out all through the winter, and we would come in and get supplies and things, and go out again on a trip and then we would come back. I don't know just the dates and the periods of time that we stayed at one place.

Q. What is the longest that the Friendship II
524 would remain either tied up at the Royal Palm Dock or anchored out in the bay or tied up—in other words, what would be the longest she would be in any one of these positions at one time?

A. I don't believe we stayed in port two weeks at any one time.

Q. What was the condition of the bottom of the Friendship II?

Mr. Parmer:
When?

Mr. Mershon:

During the whole period of September 1 to March 2, 1936.

A. Good.

Q. She did not leak a drop, did she?

A. She leaked a drop, but she wasn't considered a leaky boat.

Q. Did she leak any?

A. Very little.

Q. What was the condition of her stuffing-boxes during that same period?

A. You mean the propeller stuffing-boxes or—

Q. All of them.

A. They were not leaking.

Q. They were not leaking?

A. No, sir.

Q. Where did the water that got in the bilge come from?

A. Well, operating the water tanks would let a little bit get in; it never had very much in it.

Q. I believe you stated you pumped it out about every two weeks?

A. We kept it right down as low as we could
525 get it down. The bilge was V-shaped and you would have a little water in there, but we had an electric pump there and it wasn't any trouble to pump it out. We just pumped it, until it looked like there wasn't anything to pump out; in fact, it was necessary to keep the bilge clean or it should have been that way;

the water would get stale in there and it would get to smelling bad—

Q. Water out of the exhaust pipe, mixed with carbon monoxide and other gases, smells bad?

Mr. Parmer:

I submit that that is a question for the chemist.

The Court:

I think it is proper cross examination. The objection is overruled.

A. You mean for me to describe the smell of the water?

Q. Well, all right.

A. It would just seem like it was kind of old in there, got "sourish".

Q. Don't you know, Chief, that that water in the bilge would come from the hole in the exhaust pipe that you and Roderick later discovered on the morning of March 2, 1936?

A. No, sir.

Q. Do you say positively that it did not?

A. There was nothing that you could tell that there was any water that came in from that.

Q. You mean by that that it did not come from that leak?

A. There was a little coming out of it.

Q. Coming out of the leak in the port exhaust pipe?

A. Yes, sir.

Q. How do you account for that increasing
526 water in your bilge, when your stuffing-boxes were all tight and not leaking and that hole also in good shape and not leaking?

Mr. Parmer:

I object to the question because it assumes something that has not been shown. He has asked the witness

about "increasing" the water; there is no evidence of that at all. The Chief said just the opposite.

The Court:

I think the objection is well taken.

Mr. Mershon:

I will withdraw the question.

Q. Why was it necessary for you to pump the bilges every two weeks?

A. It wasn't necessary unless we had water in there.

Q. Did you have it in there?

A. Sometimes a little bit.

Q. How much?

A. Any time we could see it needed pumping I pumped it out.

Q. Whether it was two weeks or not?

A. Sometimes it would run the whole summer and never have to pump it out.

Q. Did you ever pump it less than two weeks' intervals?

A. I would say a lot of times when we were filling our water-tanks we would let that hose run over in the bilge and that would cause fresh water in there, and that would be pumped out, so as to keep your bilges clean and keep them from smelling.

Q. Whose duty was it to watch the bilge and pump the bilge out?

A. Mine.

Q. Did the bulkhead between the engine room and the dining room go right on down to the floor of the boat, to the bottom of the boat?

A. Yes, the beams.

Q. Did that bulkhead prevent the water coming in the bilge from the after-part of the boat going on down to the fore-part of the boat into the engine room and forward?

A. No, sir.

Q. Water could flow back and forth under that bulkhead, the engine room bulkhead?

A. Yes.

Q. Chief, will you state directly and positively whether at regular periods water accumulated in that bilge when this boat was actually operating?

A. No, sir; when standing still or running we didn't take any water in our bilge.

Q. Was there any water in the bilge when you and Mr. Roderick examined the exhaust pipes and found leaks on the morning of March 2, 1936?

A. A little bit, yes.

Q. Where did that come from?

A. Just a certain amount of water, but you can pump it out—

Q. Just a minute—do you say that no part of that water which you and Mr. Roderick found in the bilge came from the hole in the port exhaust pipe?

A. Probably some, yes.

Q. Where did the rest of it come from?

528 A. There was so little I can't say just where it came from.

Q. Had you pumped the bilge on that three and a half-day trip?

A. No, sir.

Q. You did not touch the pump?

A. No, sir.

Q. Do you recall in the month of October, 1936, a Mr. Worth Monroe, of Miami, Florida, coming over to Fort Myers and going aboard the Friendship II where she was tied up at the Riverside Dock for the purpose of examining the exhaust pipes?

A. Yes, sir.

Q. Isn't it a fact that Mr. Monroe in your presence looked down and saw some water in the bilge and asked you if there were any leaks in the bottom of the boat?

A. I don't recall the conversation.

Q. Isn't it a further fact that he not only asked you that, but didn't you reply to him, "No, she is very tight and doesn't leak a drop in the hull, and the water you see there came from a hole in the exhaust line", or words to that effect?

A. I can't remember the conversation or just what was said about it.

Q. Do you deny that?

A. I know there was a little water that came out of the exhaust pipe.

Q. Do you deny that on that occasion, at that place and time, you told Mr. Monroe the words that I just asked you about?

A. Do I deny it?

Q. Yes.

A. No, sir.

529 Q. Do you deny that you said that?

A. No, sir; I might have said that.

Q. Do you admit that you said it?

A. I might have; I don't remember.

Q. Who asked Mr. Roderick to come down and look for leaks in the exhaust pipes on March 2, 1936?

Mr. Parmer:

I object to that question; nobody has testified that Mr. Roderick was asked to come down there and look for leaks in the exhaust pipe. Mr. Roderick testified that he came down there to figure on putting in the exhaust pipe so it would run up the stack.

Mr. Mershon:

I object to the lawyer testifying for the benefit of this witness. I will withdraw the question.

(By Mr. Mershon):

Q. Who asked Mr. Roderick to come aboard on March 2, 1936?

A. I suppose that I did.

Q. For what purpose?

A. I usually—

Q. For what purpose did you ask him to come aboard?

A. It was to figure on putting new exhaust pipes in there.

Q. You did not ask him to come aboard to look for leaks in the present exhaust pipes?

A. Not when he first came down, but after we
530 got to looking at them, then we decided to go ahead and find out the trouble with these pipes.

Q. Did you ask Mr. Roderick to look for leaks in the exhaust pipe on that occasion?

A. Yes, sir.

Q. Then you did ask Mr. Roderick to look for leaks?

A. Yes, sir.

Q. Who ordered you to ask Mr. Roderick to look for leaks in the exhaust pipes?

A. Mr. Yeiser.

Q. What is the normal average depth of water in the bilge at the lowest place after you get through pumping her out?

A. Well, there are three different compartments.

Q. Let's take the very deepest one.

A. The one where we always make the inspection?

Q. Yes.

A. Well, there is about four inches right down in the deep part of it, three or four inches.

Q. About four inches?

A. Yes, sir.

Q. About four inches?

A. Yes, sir.

Q. How much square feet of surface does that area cover?

A. That would be about four inches in the bottom and by the time it got out right under the fly-wheels of

the motors it would probably spread out to two and a half feet wide.

Q. How long would it be?

A. How long?

Q. Yes.

531 A. It would taper out and it would gradually run to nothing before you got to the stern of the boat.

Q. I mean these four inches, which is the deepest point you are talking about.

A. Yes, right under the fly-wheel.

Q. That is the deepest part in the bilge?

A. No, the deepest part would be up in the bow.

Q. This morning of March 2, 1936, when you and Mr. Roderick looked for leaks and found this leak in the exhaust pipe, how much water did you say you found in the engine room or in the engine room under the fly-wheels in the bilge; how much depth?

A. I would say about four inches.

Q. In other words, four inches was as low as you got it after you pumped the bilges?

A. Yes.

Q. And you found only four inches in the bilge when you found the leaks?

A. I didn't measure it, but there was no cause to pump it out.

Q. You had taken a week-end trip of 30 miles down the bay and 30 miles back, during which time you had not pumped the bilges, and during which time there was a leak in the exhaust pipe which was spurting water into the bilges, and you say no water accumulated in the bilges since you pumped it the last time?

A. I don't remember that.

532 Q. Now what kind of inspections did you make after these children were overcome on that boat in September, 1935, checking up periodically

or otherwise on the exhaust pipes in the Friendship II; what would you do in the way of inspections?

A. First, may I ask you something?

Q. Yes.

A. Do you mean when we made the inspection after that or the inspections all along?

Q. The inspections all along after that September, 1935, inspection.

A. There was only one very thorough inspection made of the exhaust pipe and that was right after these boys were found that way.

Q. That was in September, 1935?

A. The latter part of September; I don't know the date, however, but there were periods in there when I was in there looking all around, and I would naturally look for anything I could find.

Q. You made no attempt to make regular inspections of the exhaust pipes?

A. Not a direct inspection, no, sir.

Q. But you did raise the hatch and oiled your propeller bearings?

A. I oiled the propeller shaft bearings, and in doing that I would just look down in there where they are, and I didn't give the pipes a thorough inspection.

Q. You made no effort at all to look at the exhaust pipes separate from your propeller bearings?

A. Well, I would look for everything, but not especially the exhaust pipes.

Q. You did not make any inspection of the exhaust pipes, that is, tap on them and look at them?

A. You could see to that extent, yes.

Q. You didn't single them out and look for leaks?

A. Not all along, no, sir.

Q. What did you do between September and when you made the so-called thorough inspection on March 2, when you and Mr. Roderick went down there and made the inspection of the exhaust pipes, looking for leaks?

A. After this trip?

Q. Only after this trip when the ladies were brought out unconscious.

A. Yes; sir.

Q. You did not mean to say then on your direct examination that you oiled those propeller bearings once a month and that you did that regularly, and that once a month at the same time you did make an inspection of the exhaust pipes looking for leaks in the pipes. You didn't mean to say that?

Mr. Parmer:

I object to the question on the ground that—

Mr. Mershon:

I will withdraw the question.

(By Mr. Mershon):

Q. Now what time of the day did Mr. Yeiser tell you to go down and get Mr. Roderick to come aboard the Friendship II on that day that Roderick came down and you and he looked over these exhaust pipes; what time of the day had Mr. Yeiser told you to go down there and get Roderick?

A. I don't remember.

534 Q. Do you remember that Roderick made a trip and came over and inspected the pipes with you, and that he came back the next day and put the patches on; do you remember that?

A. He put the patches on when he made the inspection; he went and got the stuff and came right back and put it on there.

Q. Do you deny or do you say that Mr. Roderick only came aboard on one day; do you say that he only came one day?

A. He came there at different times, two or three times. We were having a lot of trouble right at that time; there was a lot of confusion going on.

Q. Was it the day that the ladies were brought out unconscious that Roderick came aboard and made this inspection with you for leaks?

A. I think it was; I won't be positive.

Q. If Mr. Roderick says that he made the inspection with you on that day, and he came back the next day and put the patches on, is Mr. Roderick right or is he wrong?

A. By the way, Mr. Roderick came down there to put the patch on, but we didn't start up these motors and patch it right then, but that same day he came back and put the hose and the clamps on there. I never stood back there when he was doing it.

Q. That was the same day and not the next day after the ladies were hurt that Mr. Roderick put the clamps on the pipe?

A. It wasn't the same day; I don't think it was the same day to the best of my memory.

Q. Was it the next day; if Mr. Roderick says it was the next day—

A. It has been a long time ago and I don't remember; if it had been brought up sooner—

Q. You did not have time to get prepared on that?

A. Pardon me?

Q. You have not had time to get prepared on that question; would you want to check up on it and come back and answer it definitely?

A. I did the best I could to answer it now.

The Court:

What do you have to check up on, if you cannot remember it; have you any record to check with?

The Witness:

No. All of the bills for that work that was done were sent to Cincinnati.

The Court:

Have you any records to check that up with?

The Witness:

No, sir.

(By Mr. Mershon):

Q. Had Mr. Yeiser had some work done on the Friendship II over at Fort Myers prior to this trip which ended on March 2, 1936; had he had some work done at the Fort Myers Boat Yard or at Loftin's Boat Yard?

A. That is where we dry-docked.

Q. Had he had some work done on the boat there?

A. Yes.

Q. Had he secured some estimates on the repairs to the exhaust pipes from Loftin's Boat Yard?

A. No, sir, not that I know of.

Q. Had he discussed with you the matter of replacing the exhaust pipes; had Mr. Yeiser discussed with you the matter of replacing the exhaust pipes in the Friendship II at any time prior to the injury to these young ladies on March 1-2, 1936?

A. Well, it was said several times that he would like to exchange the exhaust pipes on account of the trouble that he had had there; I mean on account of this gas, this smoke and things that was causing the trouble on the boat. Mr. Yeiser wanted everything in absolutely first-class shape.

Q. Did he ever instruct you to get estimates for changing these exhaust pipes for any reason?

A. Mr. Yeiser?

Q. Yes.

A. No, sir.

Q. He never did that?

A. No, sir.

Q. Did he discuss with you the changing of the exhaust pipes and replacing these pipes prior to the time the young ladies were injured?

A. Not that I remember directly.

Q. What do you mean by "directly"?

A. I mean directly; there were just a few remarks made, something said about the exhaust pipes; many times he would drop in and say something about the pipes; he talked about raising them up through the stack; in that respect it had been talked about, but after this accident with the girls that is when he was desirous of having something done, and that was why Mr. Roderick came aboard.

Q. Were there any instruments in the engine
537 room by which you could test the depth of the water in the bilge of the boat, the Friendship II?

A. I always had a crank lever there about three and a half feet long; it was just a piece of iron with a handle on it, and I would just reach down through the hole and sound with that.

Q. One more question and I will be through: When these tests were made over in Fort Myers where you held the hose to the port exhaust pipe, was there any water in the bilge under the place where you were holding the hose against the exhaust pipe?

A. Very little. We run it for two hours and twenty minutes and the water was running out of it all of the time then and that was getting into the bilge; that was when we made the test. We made the test with the hose after we run the engine for two hours, so there was a little water down there.

Q. Did you have to squeeze that hose pretty hard under that leak in order to get sufficient grip to pull it against the exhaust pipe?

A. No, sir, the hose was fit; I didn't have to squeeze it, because the hose I had was held tight up against the pipe.

Q. You just held it with one hand?

A. Probably with both of them; I would hold it with one hand and then the other; it was kind of hard to hold it.

Q. Did you change hands?

A. No, sir.

Q. You don't know whether you used one
538 hand or both hands?

A. Probably used both of them at times. The hose wasn't so big; it was just clamped along up there, mashed it up there around this pipe.

Q. Chief, I am not trying to embarrass you; I am trying to get you to tell me what you know, if you can do it. To the best of your knowledge please state whether you held the hose against that exhaust pipe with both hands all of the time during that test.

A. I believe I held it all of the time with my right hand.

Q. With your right hand?

A. I believe so, because I had my other hand bracing myself, because I was reaching over.

Q. You were in a strained position?

A. Yes.

Q. You were somewhat off balance?

A. No, but I couldn't stand up straight.

Q. I believe you said it seemed like ten minutes, when in fact it turned out to be only four.

Mr. Mershon:

That is all.

Re-Direct Examination.

By Mr. Parmer:

Q. On all of these occasions when Mr. Yeiser made remarks about changing the exhaust pipes, did he say in what way he wanted to change them?

A. Yes.

Q. Please tell us what he said in full.

A. He wanted them to go out through the top.

539 Mr. Mayne:
Was this on every occasion?

Mr. Parmer:

I asked that question and I believe he answered it. Shall I ask him again?

Mr. Mayne:

I want to know whether this referred to all occasions or just once—just one specific occasion.

Mr. Parmer:

I will ask him.

(By Mr. Palmer):

Q. Mr. Blount, my question was on all of those occasions when Mr. Yeiser spoke about changing the exhaust pipes on the Friendship II, tell us what he said with regard to the change he wanted to make.

A. He wanted them to go out through the roof, out through the top, and we told him that it would destroy the deck-house, that the deck-house would have to be changed, and that was all that was said about it until the last time, then he says "they will have to go out through the top"; he said they would have to go out through the top regardless, and that it didn't make any difference, that they would have to be put out through the top.

Q. When Mr. Roderick came aboard the ship the first time did he make any measurements with the view of running these exhaust pipes out through the top?

A. I believe he did, yes.

Q. Did anybody else come aboard and make measurements for that purpose?

A. Yes.

Q. How many other people?

540 A. Two that I know of.

Q. Two others, you mean?

A. Yes, sir.

Q. Now at the time when Roderick came on board the vessel for the purpose of estimating on that work were you with him at that time, were you with him when he was making his measurements?

A. I was around there, I don't know whether I was right with him. We discussed it some, yes.

Q. Were there any difficulties in the way of running these pipes up through the stack?

A. Many of them.

Q. For instance?

A. Well, it interfered with that part of our dining room, and it interfered with going through the deck salon.

Q. In order to allow them to go out through the top would the exhaust pipes have to go through the deck salon?

Mr. Mayne:

I don't think it is material what Mr. Yeiser wanted to do after the accident; however, I will withdraw the objection.

Q. Now, Chief, you say that you had an experience yourself, along with someone else, in being affected with gas on the Friendship II?

A. Yes, sir.

Q. Will you tell us in your own words everything that happened at the time you were affected with gas, where you were and what happened, if you can?

A. Well, this fishing guide and myself had
541 an ice-box just on the stern of the boat that we kept our bait in, and we wanted to take this bait and cut it up for trolling, and we went back there on the lower deck, right on the stern, and we went back there and we stood out there and cut up possibly a couple dozen of mullets, cut them up for bait for fishing—

Q. How long did that take?

A. Probably forty minutes or maybe an hour; both of us were working in a hurry. We were standing there and then we started to walk off and we felt kind of "weakish", like our legs didn't want to support us good, and after that we began to develop a little headache, both of us; both of us had the same headache, and that was all there was to it. We were right out in the open air, but there was no wind blowing.

Q. Are you acquainted with other boats of the type of the Friendship II in which the gas coming from the exhaust pipe will come in over the after-deck?

A. Only the ones that I had run like the old Friendship. Now her's used to come out on either side pretty well aft, and we had the same trouble with her.

Q. What would you have to do in order to prevent the gas from coming in where the people would be?

A. We run those exhaust pipes up through the stack.

Q. You changed the exhaust pipes on that boat?

A. Yes.

Q. Until you made that change what did you
542 have to do in order to protect the people on the boat from the gas coming in there from the outside?

A. It was a larger boat and they would just move in different places. That is the way he wanted to fix the exhaust pipes on this other boat, the Friendship II.

Q. Did you ever hear Mr. Yeiser say anything which would indicate that he had any knowledge that these particular exhaust pipes on the Friendship II were defective in the sense that they had holes in them?

A. No, sir, he didn't think they had any holes in them.

Mr. Mayne:

That is objected to—

Mr. Parmer:

I will consent that it be stricken.

(By Mr. Parmer):

Q. I want to know whether Mr. Yeiser ever said anything to indicate that he knew the pipes had holes in them?

A. No, sir.

Mr. Mershon:

We object to that as being irrelevant and immaterial; there is no proof here that he didn't have knowledge.

The Court:

I will sustain the objection and the answer may be stricken. You can ask the witness along that line if Mr. Yeiser ever said anything about holes in the pipe.

Mr. Parmer:

Then there will be no objection to that?

Mr. Mayne:

We have not heard the question yet.

(By Mr. Parmer):

Q. Did Mr. Yeiser before March 2, 1936, ever say anything about holes in the pipes?

A. No, sir.

Q. Now, Mr. Blount, what ventilation did you
543 have in the engine room on board the Friendship II?

A. It had a ventilator that went out through the top, went out through the top.

Q. When you say you had a ventilator, tell us what it was.

A. It was a box-affair from the room to the engine room; it was a funnel-shaped ventilator setting up on top of that.

Q. When you say "funnel" do you mean that it was sort of goose-necked?

A. Yes.

Q. That you could turn to the wind?

A. Yes, or turn it back.

Q. What else was there in the engine room to aid ventilation?

A. Windows that opened on the port side, and a door.

Q. Did you have a fan there?

A. Yes.

Q. What kind of fan was it?

A. A 16-inch oscillating fan.

Q. Now Chief, this is the starboard exhaust pipe; I think it is Exhibit No. 1. How long before March 2nd had you begun to put tape on that?

A. I don't know, sir.

Q. You can't remember?

A. No, sir.

Q. You can't remember?

A. No, sir.

Q. You say that this Exhibit 1, this part of
544 the exhaust pipe was in back of the motor?

A. Yes, sir.

Q. Now you had two motors there, did you not?

A. Yes, sir.

Q. How did they run?

A. Fore and aft.

Q. Was there a space between each motor where you could walk?

A. Between the motors?

Q. Yes.

A. Yes, sir.

Q. How long was the motor from the place where this Exhibit 1 joined it to its other end?

A. From the place where Exhibit 1 joined onto the rear end of the motor, to the other end of the motor?

Q. Yes.

A. About seven feet, I would say.

Q. Seven feet?

A. No; to the other end of the motor it was about four and a half feet, and about seven feet to the door.

Q. Did the door enter into the engine room from a bulkhead which was on the side of the motor, or was it solid in back of the motor?

A. The door was in front of the motor.

Q. That is farther forward than the motor?

A. Yes, sir.

Q. And how wide was the motor?

A. I would say about twenty-four inches.

545 Q. Was this exhaust pipe, which is Exhibit 1, attached to the motor in the middle or to one side?

A. To the back end of it.

Q. Was it in the middle or more to one side?

A. No, it was on one side.

Q. Which side was it on, toward the side which was nearer the other motor or toward the side which was away from the other motor?

A. Away from the other motor.

Q. Whenever this part of the exhaust pipe, Exhibit No. 1, would start to leak how would you notice it?

A. Just by seeing it.

Q. By what?

A. Just by seeing it, and you could hear it.

Q. What would you see?

A. You could see water coming out of it.

Q. Where did the water go?

A. Right down the bilge.

Q. Was there an open space under this pipe leading to the pipe, or was there a flooring there?

A. There was a flooring there that came up on this part where it is green (indicating).

Q. Tell me if I understand you correctly: Was this part of Exhibit 1 that is covered by tape underneath the level of the engine room floor as it was attached to the motor?

A. Yes.

Q. By whom were you employed before you
546 left Fort Myers to come to Miami to testify in this case?

A. The Lee County Land Company are the ones that the checks are made on, but it was the Collier Interests.

Q. What kind of work have you been doing?

A. Engineering.

Q. On a boat?

A. On a dredge.

Q. How long have you been employed by them?

A. About five months.

Q. Now that bilge pump which you had on board the ship, Mr. Blount, to what level would that drain the water from the bilge at the place where it was set?

A. Are you talking of this one right under the fly-wheels?

Q. Yes.

A. In the center of the boat there was a box-like screen made on the bottom of it to keep sand from getting into the pump, and when you got that down to about three and a half inches right at that spot—

Q. When you brought it beyond three and a half inches what would it do?

A. It would pull air.

Q. I think that in your answers to some of Mr. Mer-shon's questions you said that Roderick came on board several times; is that correct?

A. Yes.

Q. Do you remember whether those several
547 times to which you referred were on separate days?

A. Yes.

Q. Which were they, on separate days or on the same day?

A. Pertaining to the pipes?

Q. I don't care what it was pertaining to.

A. After we came in there for three or four days or maybe more, he was down there at different times; he came and went any number of times, and just what was done each time I don't remember; that was after we came in from this trip.

Q. Now, Chief, I will show you a book. I want you to tell me if you recognize it and if you do, tell the Court what it is.

A. Yes.

Q. What is it?

A. It is a log-book, that is what we call a log-book.

Mr. Mershon:

If Your Honor please, we object to the question as not being proper re-direct examination.

The Court:

I think the objection is well taken, if you are going to introduce the log-book.

Mr. Parmer:

I am ~~not~~ going to introduce it. I am going to have him refresh his recollection in regard to where the boat went on all of these different times that Mr. Mershon has been asking him about. Mr. Mershon tried to test his recollection with regard to all of these places, and I am trying to find out more definitely now where this boat was occupied in going.

548 The Court:

Well, it may be re-direct examination on that basis. Why don't you just offer the book?

Mr. Mershon:

Did he make the entries in the book?

The Court:

If it is the log of the vessel, why not offer the whole log?

Mr. Parmer:

I am perfectly willing.

Mr. Mershon:

If counsel will permit me to examine it, Your Honor, we might shorten it up.

Mr. Parmer:

If the witness will say it is the log book and that it was kept in his handwriting, I will offer it in evidence.

Mr. Mershon:

We have no objection to him qualifying him, to see if he made the entries. Go ahead.

(By Mr. Parmer):

Q. What is this, Chief?

A. It is a log-book.

Q. Of what vessel?

A. Of the yacht Friendship II.

Q. Between what periods?

A. Between the 1st day of January up until she was laid up.

The Court:

What year?

The Witness:

1936.

The Court:

It does not cover the period from September, 1935, to January, 1936?

The Witness:

No, sir.

The Court:

Neither does it cover the period from May, 1934, until September, 1935?

The Witness:

No, sir.

549 Mr. Parmer:

It only covers a part of the period, Your Honor.

The Court:

Then I don't know whether that would be re-direct or not.

Mr. Mershon:

Maybe counsel would like to produce the entire log and let us see the whole thing; and then we will get along.

Mr. Parmer:

I will explain its absence, but at the present time all I have is this log-book, and that covers part of the matters concerning which Mr. Mershon was inquiring. I submit I am correct in the manner in which I am proceeding, but if Mr. Mershon wishes me to offer it in evidence—

The Court:

You may proceed with the examination.

(By Mr. Parmer):

Q. Are the entries in your handwriting, Mr. Blount?

A. Yes, sir.

Q. All of the entries?

A. Every one.

Q. Were these entries made by you as the result of your personal knowledge of the events which you endeavored to record in that log-book?

A. Yes, sir.

Q. That is, your knowledge with regard to the places you were and the times that you started and the times you got to other places?

A. Yes, sir.

550 Mr. Mershon:

May I ask him a question on that?

Mr. Parmer:

Yes.

(By Mr. Mershon):

Q. Was it your duty to keep that record?

A. Yes, sir.

Q. Were you instructed by Mr. Yeiser to keep it?

A. This is not a complete log-book; it is just a running-log.

Q. Was that kept in the engine room or in the pilot house?

A. That was kept in the engine room, or right there at it.

Mr. Mershon:

I would like to see it if I may.

Mr. Parmer:

Do you want to see it before I offer it in evidence or before I inquire of the witness or what?

Mr. Mershon:.

Let me see it before you offer it in evidence.

The Court:

I think it would be proper re-direct examination to use the log all during the time which was covered by Mr. Mershon's examination, but it will aid the witness only in refreshing his memory as to that part of the time. I suppose it is competent for that purpose. You might ask him to look at it to refresh his memory covering the entries that he made from that time, from January to March.

Mr. Parmer:

I have two ways; I can ask him to read all of this into the record or offer it in evidence.

Mr. Mayne:

Let us see it and maybe we can save some time.

Mr. Parmer:

All right.

(By Mr. Parmer):

Q. I wish you would look at the log-book and use it for the purpose of refreshing your recollection and tell us where the Friendship II went from January 1, 1936, until March 2, 1936, and the dates on which she went to each place and the time that she left on this trip which began on February 28th, and the time that she started from Featherbed Shoals on March 2, 1936, and the time she returned to the dock in Miami on the same day.

Mr. Mershon:

We object to that upon the ground that it is not proper re-direct examination; secondly, the log appears to have

been only a private record and is incomplete, and it has not been shown that there is any other complete shipment log concerning the entire period as to which the witness testified; third, it is in the nature of a self-serving recital by the witness; fourth, it does not appear that the witness by looking at the log could recite the information therein contained of his own knowledge; fifth, an inspection of the log by the Court will disclose that it is incorrect on its face and does not recite matters which this witness has testified happened on certain dates; that on its face it is incorrect and unreliable, and the witness has already testified that the ship's log is in existence.

The Court:

Is that a fact that he testified to?

Mr. Mershon:

I will ask him.

(By Mr. Mershon):

Q. Was there another log kept on board the Friendship II?

A. Yes, sir.

Q. Did Captain Roberts keep the log?

A. That is his property.

552 Mr. Parmer:
What is it?

The Witness:

The log of the ship.

(By Mr. Mershon):

Q. Did Captain Roberts keep a log for that ship?

A. I won't say.

Q. Was there another log besides this one kept aboard the Friendship II while you were making this record?

A. No.

Q. Was there any log on the Friendship II kept there aboard?

A. No, sir.

Q. Captain Roberts didn't make any record in the nature of a log on the Friendship II?

A. No, sir.

Q. Did he make any record in the nature of a log which he kept for his own personal individual use?

A. No, sir.

Q. Is this the only log that was kept of any kind for the Friendship II during the period from January 1 to the dates therein shown?

A. Yes, sir.

Q. Was there any log kept from September 1, 1935, up to January 1, 1936?

A. Yes, sir.

Q. Who was that kept by?

A. By me.

Q. Where is that?

A. I couldn't say.

553 The Court:

What was it you had reference to when you said something was kept by Captain Roberts?

The Witness:

Well, it was kept by him as a private log, in order to make any report that we might need for accidents or for insurance purposes; that is practically what the log is kept for.

The Court:

Let me ask him this: Did you keep—whether you called it a log or not—a record similar to this for the period of 1935—

The Witness:

Yes, sir.

The Court:

Do you know where that is?

The Witness:

No, sir.

The Court:

When was it last in your possession?

The Witness:

It was always on the boat, and when the boat was sold some of these things were done away with; I guess the Captain took it; it wasn't mine.

The Court:

The other instrument; whether they called it a log or not—did Captain Roberts keep some record of the movements of the vessel?

The Witness:

Only through that.

The Court:

Through what?

The Witness:

This book.

The Court:

The one that you kept?

The Witness:

Yes, sir.

The Court:

He didn't keep one himself?

554 The Witness:

No, sir.

The Court:

Well, have you looked over this book since it has been handed you by Mr. Parmer on the stand?

The Witness:

I just looked at some of the writing in it; I didn't look through it entirely, no, sir.

The Court:

Well, from what you looked over do you want to change any of your testimony about what movements were made from January 1 to March 2, 1936?

The Witness:

No, sir.

The Court:

That book won't serve to refresh your memory or cause you to change anything that you said?

The Witness:

I don't think so, no, sir.

The Court:

Will by looking over that book help you to make more complete any answers that you have heretofore given as to the movements of the boat from January 1 to March 2, 1936?

The Witness:

It would give us exactly where the boat was at all times from the 1st of January up to this time.

The Court:

You mean it would refresh your memory and give a more complete statement of the movements of the boat?

The Witness:

I don't know whether I could recite the dates and the times off, but—

The Court:

If you looked at it would it refresh your memory to make a statement?

The Witness:

Yes, I believe it would if I would be allowed to make notes of it.

555 The Court:

Well, when did you make the entries in that book?

The Witness:

Well, I had little pads that I kept on the boat, and I would take the notes off of the pads and put them into the book.

The Court:

When did you put them in the book?

The Witness:

Nearly every day, or every few days.

The Court:

Where are the pads; did you destroy them?

The Witness:

Yes, I guess so.

The Court:

Well, I will sustain the objection. I do not think this is re-direct examination.

Mr. Parmer:

Does Your Honor sustain the objection merely on the ground that I may not make this inquiry on re-direct examination, or on the other ground that I may not refresh the witness' recollection with respect to matters brought out on Mr. Mershon's cross examination?

The Court:

The question covered not only the movements of the vessel collaterally, and when I say "collaterally" I mean other than the trip in question, beginning on March 28th, but you embrace in your question the general movements of the vessel on other occasions.

(Legal argument.)

The Court:

I will sustain the objection, and you can reframe your question.

(By Mr. Parmer):

Q. Mr. Blount, will you take this log-book and look at it and use it to refresh your recollection, and will you tell us where the boat went from January 1 until February 28, 1936, the places at which she was on the different dates and to which she went on the various trips she made, and the times that the trips began and the times that the trips ended; in other words, give the movements of the vessel between January 1 and February 28?

Mr. Mershon:

We interpose the same objections that we interposed before.

The Court:

Well, the objection will be overruled. You may answer the question.

(By Mr. Parmer):

Q. Will you answer the question, sir, that is, if you can remember it and understand it...

A. I can't remember it at all.

The Court:

You can take the book and refresh your memory and if you want to tell us in more detail, with your memory refreshed by the memorandum there, then you can do so.

The Witness:

As I to take the book?

The Court:

Just look at it; use it to refresh your memory. Look at the first entry there on January 1.

The Witness:

On January 1st we left Miami, Florida; we had docked at 7:30 and we arrived at Angelfish Creek at 12:00 P. M.

The Court:

Do you remember that you did that that day; do you have any independent recollection now of that, since your memory has been refreshed; do you have an independent recollection that you did make that trip?

557 The Witness:

No, sir. I lived on the boat and—

Mr. Mershon:

May I ask the witness two or three questions before we adjourn?

The Court:
All right.

(By Mr. Mershon):

Q. You were asked about the motors in the engine room and about this starboard exhaust pipe, Claimants' Exhibit No. 1, and you were asked about the space that existed around the motors and the exhaust pipe where you could walk around them. Is it not a fact that there was a space on all sides of each motor where you could walk around and look over the motors?

A. No, sir.

Q. Where was there any space that you could walk over and around those motors?

A. On the starboard engine you could walk alongside of it.

Q. You couldn't walk on the starboard side of the starboard engine?

A. No, sir.

Q. But you could walk between the engines back to this patch on this starboard exhaust pipe, couldn't you?

A. Practically to the patch.

Q. And standing between the two engines this patch on the starboard exhaust pipe, Exhibit No. 1, was plainly visible, wasn't it?

A. Yes, you could see it.

Q. Now, what was it, Mr. Blount, you said
558 about what Mr. Yeiser said to you about changing the exhaust pipes the morning the young ladies were hurt; what did he say about that?

A. He said that the exhaust pipes must go out through the top.

Q. What reason did he give for that on that morning, as you expressed it on your direct examination?

A. I suppose it was on account of this accident.

Q. What accident?

A. This case we are trying here right now.

Q. I mean what accident did he refer to as the reason why the exhaust pipes must go out, meaning Mr. Yeiser?

A. Will you have him repeat that question for me?

Q. I will withdraw that question. What were Mr. Yeiser's words to you, in his own words, as the reason why he told you that these exhaust pipes must go out, the present exhaust pipes must come out, and the exhaust pipes must go up through the stack; what was the reason in Mr. Yeiser's words for doing that with the exhaust pipes?

A. He gave me a direct order.

Q. What reason did Mr. Yeiser give you, if any, for deciding right then that the exhaust pipes must go up the stack?

A. Mr. Yeiser gave me a direct order to get somebody there to bid on that job to get them up through the top.

Q. What reason did he give you for having that done that day?

A. I suppose—

Q. Don't suppose.

A. I don't remember how that came about, 559 but it was said, if that will help.

Q. I think your lawyer helped more than you did. What was Mr. Yeiser's order to you; do you remember that?

A. To get someone to figure on putting the exhaust out through the roof; that they must go out through the roof.

Q. What did he say; what happened to the pipes as they were then in the bilge?

A. Mr. Yeiser said nothing about the bilge.

Q. He didn't say the pipes must come out of the bilge?

A. Yes, sir.

Q. And what reasons, if any, did he have for wanting them to come out of the bilge?

A. On account of these girls' sickness, I guess.

Q. Well, what was there about the girls' sickness that had anything in the world to do with the exhaust pipes, according to Mr. Yeiser?

Mr. Parmer:

That is a different question.

Mr. Mershon:

Well, according to what Mr. Yeiser said to him.

The Court:

Are you objecting to the question, Mr. Parmer?

Mr. Parmer:

Yes.

The Court:

State your objection in the record.

Mr. Parmer:

I object to that question on the ground that it does not ask the witness what Mr. Yeiser said, but it asks him to interpret what Mr. Yeiser said. He asked him what was there and what Mr. Yeiser said that would be a reason in view of the girls' condition for
560 "doing something to these exhaust pipes below;
he asked him to interpret what Mr. Yeiser said before we find out what he did say.

The Court:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:

The objection is sustained. You might ask the witness about what Mr. Yeiser said in connection with getting someone there and what Mr. Yeiser said about changing the pipes.

(By Mr. Mershon):

Q. What did Mr. Yeiser say to you about getting somebody there to change the pipes?

A. He gave me an order to get someone there to figure on putting the pipes out the top.

Q. What did he say to you as his reason for having that done that day?

A. I don't remember.

Q. Did he say to you or did he make any statement to you that it was necessary to change those pipes because of what had happened to the young ladies on that trip?

A. I can't remember of him saying anything about that to me; no, sir.

Q. He didn't mention the young ladies at all or the accident to them in connection with changing the exhaust pipes?

A. Not that I remember.

Q. Do you now say positively that he did not
561 refer to the accident to the young ladies as the reason why those pipes must now be changed?

A. I don't remember the words that he used, but when he came there it was just a direct order to get someone there to put the exhaust pipes out through the top.

Q. What time of the day was it that he told you that?

A. It was sometime either on the 2nd of March—I believe it was the 2nd of March, the same day that we came in.

Q. In the morning or afternoon?

A. I don't remember.

Q. Was it after the young ladies were moved off of the boat, or either of them were moved?

A. I don't remember.

Q. You think it was during the day of March 2, but you don't know what time of the day?

A. Yes.

Q. Did you go immediately to see Mr. Roderick and ask him to come down?

A. I believe I used the phone.

Q. Did you do that immediately?

A. After he told me, yes.

The Court:

All right, we will suspend until tomorrow at 1:30.

562 Miami, Florida, October 9, 1937, 1:30 P. M.

Mr. Parmer:

I would like to recall Chief Blount.

The Court:

All right.

Thereupon CARL BLOUNT was recalled for further examination, and testified as follows:

Re-Direct Examination.

By Mr. Parmer:

Q. Mr. Blount, is this the log-book of the Friendship II kept by you from January 1, 1936, until March 2, 1936?

A. Yes, sir.

Q. It is?

A. Yes.

Q. Does it show the places at which the vessel was at various times?

Mr. Mershon:

We object to the question.

Mr. Parmer:

I will withdraw it.

Q. Tell us what the log shows?

Mr. Mershon:

We object to the question as the log itself is the best evidence. He might ask him what the log was kept for and what purpose.

Mr. Mayne:

It is all repetition.

563 The Court:

I think the record already shows what it was kept for.

Mr. Mershon:

Do I understand this is a brand new offer?

Mr. Parmer:

Yes. I now offer the log-book in evidence, but merely the parts of it which show where the vessel was at various times between January 1, 1936, and February 28, 1936, the places to which it went and the times at which it began these voyages and the times at which the voyages were ended.

Mr. Mershon:

We object to the offer, and before stating the grounds of our objection I would like to interrogate the witness.

The Court:
All right.

By Mr. Mershon:

Q. Was that book a part of the records and equipment of the yacht 'Friendship II' itself or was it simply a private record that you kept for your own convenience?

The Court:
Answer the question.

A. Well, it wasn't kept for my own convenience.

Q. Was it a part of the records and equipment of the boat itself?

A. It is not a part of the equipment of the boat.

Q. Is it a part of the records of the boat?

A. It is a record of our movements.

The Court:
Who does it belong to?

The Witness:
It belongs to the Captain.

(By Mr. Mershon):

Q. It did not belong to the boat?

A. No, sir.

564 Q. Could anyone inspecting the boat have seen that log without the Captain's personal consent?

A. No, sir.

Q. Did the Captain claim the right to take that log with him wherever he went on that boat, or off the boat?

A. Yes, sir.

Q. The Captain claimed that that was his own personal property, didn't he?

A. Yes, sir.

Mr. Mershon:

Now, if Your Honor please, we object to the introduction of any part of that book, because it does not appear on its face to be a log of the movements of the Friendship II or any other boat; second, the witness has testified that it is not an original entry; third, the witness has testified that these items were posted several days later from other memoranda; fourth, it is in the nature of a self-serving declaration on the part of the witness; fifth, the witness has testified that he has no independent recollection whatsoever of the matters therein set forth; sixth, it appears to be a record which was kept in the possession of the Captain, Captain Roberts, and not in the possession of the witness, and over which the witness has not had and does not now have the control; seventh, the witness has testified and it appears from the face of the instrument that it does not cover the full period of time from September, 1935, to March 2, 1936, about which the witness testified.

The Court:

Let me see the book.

565

Mr. Mershon:

And there is no showing of the accuracy of the entries; eighth, the witness has testified that he has no independent knowledge of the matters set forth, and he cannot therefore verify the accuracy or truth of the matters therein set forth. It has also been testified that there is another log or similar book or document which was in the possession of Captain Roberts which is necessary to complete this record so that it will include the dates about which the witness has testified. If this in-

strument is to be put in evidence covering a portion of the movements of the vessel; the entire instrument should be offered. I want to add the additional ground that it is shown upon its face to be inaccurate.

The Court:

Were all of these entries made by you in your own handwriting?

The Witness:

Yes, sir.

The Court:

What were the pads from which you copied this; were they written in pencil or ink?

The Witness:

With pencil.

The Court:

How long a time elapsed after the making of the pad entries before they were written in this book?

The Witness:

It varied, I suppose; I could not give you the exact time.

The Court:

What was your reason for writing them on the pads and then writing them in this book?

566 The Witness:

I had the pad in the engine room and that book was in our quarters, in my room on the boat.

The Court:

What was the usual practice with reference to transcribing the notes from the pads to this book, with reference to time?

The Witness:

The same as I have done there.

The Court:

You did not understand me. What was the usual practice with reference to when you would transfer your notes from the pencil memorandum to this ink memorandum?

The Witness:

Sometimes it was several days, and most usually there would be a few of them that I would put in that way, sometimes probably a week.

The Court:

The offer is made for the purpose of showing the movements of the boat and not with respect to any other entries?

The Witness:

May I add, Judge, that we didn't keep that for a running log-book, but the boat was insured and the movements of the boat had to be kept, because when we had any bills for any damages done to the boat we would have to give the correct time and place where these things occurred.

The Court:

Did the other record indicate the time of leaving and the time of arrival on trips?

The Witness:

Sure.

Mr. Parmer:

What record?

The Court:

The other record that he said was kept for the insurance company.

Mr. Parmer:

He said this one.

567 The Court:

No.

The Witness:

Yes.

The Court:

This was kept for that purpose?

The Witness:

Yes, sir.

The Court:

This was kept for the purpose of the insurance company record?

The Witness:

In case we had any collision or anything at sea, we had to present a bill to the insurance company.

The Court:

Was the book kept for the purpose of showing the time of leaving and the time of arrival on all trips?

The Witness:

Yes.

The Court:

How was the insurance company interested in that?

The Witness:

Because, whenever we had an accident; if we run into a submerged log and tore one of our propellers off, or some other boat run into us, we were supposed to give the location and time and where this was at.

The Court:

Did you put down in here a complete log of the boat, meaning a complete history of all of the trips it took during this period from January 1 to March 2, 1936?

The Witness:

Yes.

Mr. Mershon:

In view of the testimony of this witness, I would like to add an additional objection that the witness has testified that it wasn't a running log of the boat, but that it was a private record kept merely to advise the insurance company of any accidents that might have happened from time to time.

568 The Court:

Well, the ruling of the Court is that it is a memoranda, whether it measures to a log technically or not it is not necessary to decide. It is a memorandum kept by this witness in a sufficiently evidentiary manner to make it as admissible as showing the movements of the vessel at the times mentioned. It is admitted for that purpose only.

Mr. Mershon:

Can we have photostatic copies made of the portions in question, without offering the whole book?

Mr. Parmer:

I will agree to that.

(Thereupon the document above referred to was marked PETITIONER'S EXHIBIT No. 2.)

Mr. Parmer:

That is all.

Mr. Mershon:

With the Court's and counsel's permission we should like to have Mr. Blount sign his name on the first and second pages of this instrument for the purpose of identification and for possible comparison later of handwriting.

Mr. Parmer:

Sure.

569

Thereupon CAPTAIN FREDERICK ROBERTS was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. Captain Roberts, where do you live?

A. Fort Meyers.

Q. Do you hold a Master's license for running steamships?

A. A Master Pilot's license.

Q. How long have you been going to sea in any capacity?

A. Well, I have the fifth issue on that.

Q. You will have to explain that to me; I do not know what that means.

A. Well, the fifth issue. You get a license for five years and you have to renew them.

Q. And you have been doing that for 25 years; is that right?

A. Yes, sir.

Q. Now were you formerly Captain of the Friendship II?

A. Yes, sir.

Q. When did you become Captain of that boat?

A. I don't know the exact date. It was in May, 1935, I think.

Q. You think it was 1935?

A. Yes.

Q. You think it was in May also?

A. Yes, sir.

Q. Well now were you Captain of that vessel
570 in March, 1936?

A. Yes, sir.

Q. Were you Captain at the time that Mrs. Just and Miss Gruner and Mr. McKay and Mr. Yeiser went on this trip, which is the beginning of this lawsuit?

A. Yes, sir.

Q. Well now prior to going on that trip how long had the vessel been in Miami?

A. I would say about 18 or 19 days.

Q. Was Mr. Yeiser on the vessel at that time?

A. Yes, sir.

Q. Now at the beginning of that trip what was his physical condition?

A. It was very poor.

Mr. Mershon:

What period?

Mr. Parmer:

The beginning of that 18-day period.

Q. How long had he been on the boat at the beginning of that 18-day period?

A. Before you mean?

Q. Yes, before the 18-day period how long had he been on there?

A. Well, I would say about along Christmas time, sometime along there he went home and his family came down for about two weeks, the children and Mrs. Yeiser.

Q. During the time that he was on the vessel from September on did you observe his habits with reference to drinking? Did you?

A. I don't understand that.

Q. I say during the time from September on, September, 1935, onward up until March of 1936, did you observe his habits with respect to drinking intoxicating liquors? Did you observe them?

A. I guess the answer would be that I advised him all of the time to keep from drinking.

Q. But did you observe how much he drank and the way he drank? Answer that question yes or no?

A. Well, I would have an idea.

Q. What is that?

A. When he was drinking—

Q. No, Captain; you are on the witness-stand and you must answer the questions.

A. I don't understand that question about "observe".

Q. Did you see the way he drank?

A. Yes.

Q. What did you see about the way he drank?

A. Well, he would start drinking and would drink steadily for a 24-hour period, sometimes for two or three weeks; he would lay right in bed and couldn't get up.

Q. I believe you said you made every effort to keep him from drinking?

A. Yes.

Q. What did you do?

572 A. I went to Shark River and threw his whiskey overboard and kept the man thoroughly sober. I would get that man to the point where he didn't have any liquor or anything in him, and then we would go to West Palm Beach or Fort Meyers or Miami, and when he would get in here he would have quite a number of friends on board, and then he would get just as bad as ever again.

Q. When you came to Miami about 18 days before you went on this voyage had he been drunk and over it then?

A. Yes, sir.

Q. Was any medical treatment obtained for him when the vessel came to Miami?

A. Yes, sir.

Q. Who gave that medical treatment?

A. Dr. Howell.

Q. Now during that period, from the time that the vessel came to Miami and until she sailed on this trip on February 28th, did you observe any change in Mr. Yeiser's condition?

A. Very bad.

Q. You observed a change, did you?

A. Yes.

Q. Will you describe what that condition was, what the change was?

A. Well, he was feeling pretty bad; he was in—

573 Q. Did you notice a change with respect to the amount that he drank?

A. His whiskey was cut down as quick as the doctor came aboard.

Mr. Mershon:

I move to strike that as being a conclusion of the witness; also upon the ground that he is not competent

to testify to that; he has not been shown to be competent to testify as to the amount Mr. Yeiser drank.

The Court:

The objection is overruled. The motion is denied.

(By Mr. Parmer):

Q. Were you on the boat all of the time while the boat was in Miami?

A. Yes, sir.

Q. Were you in and out of his room from time to time?

A. Two or three or four times a day, and at nights, up until ten or eleven or twelve o'clock at night.

Q. Did you have any opportunity to see what he drank and how often he drank?

A. No; the nurse had taken charge of that as soon as she came aboard.

Q. You say he was in bed when you arrived in Miami?

A. Yes.

Q. Did he get out of bed?

A. When he did he went on the back deck, but someone had to help him get there.

Q. In what way did you have to help him?

A. Take hold of him and pull him up.

Q. Couldn't he walk himself?

A. No, sir.

Q. At any time before he went on this trip,
574 which began on February 28th, was he able to walk?

A. He could pull himself around on the boat; he could catch hold of the rail and pull himself around on the boat; he was very strong in his arms and he could get hold of something to hold on to on the boat, but he couldn't go ashore and walk around on the streets.

Q. What I want to know is did he ever, before he went on this trip, get well enough so that he could walk around? Did he go ashore?

A. Before he went on this trip with the girls?

Q. Yes.

A. Yes, sir.

Q. He did go ashore before?

A. Yes, sir.

Q. Did you see him go ashore?

A. Yes, sir.

Q. And at that time what did you see?

A. One of the nurses taking him ashore and he walked just as straight as any man could walk and he went around Miami, and he called his people in Cincinnati on Thursday—

Q. That was Thursday?

A. Yes.

Mr. Mershon:

We move to strike what this witness says Mr. Yeiser did while he was ashore?

575 Mr. Parmer:

I will consent to that, everything that took place after Mr. Yeiser got out of this man's line of vision.

Mr. Mershon:

We realize that much of the witness' testimony is incompetent, irrelevant and immaterial, but in order to save time we will let the whole thing go before the Court, and unless it gets too bad we will continue to follow that suggestion.

The Court:

All right.

(By Mr. Parmer):

Q. When did you first learn that this trip was contemplated?

A. It was Thursday afternoon late, probably around eight o'clock.

Q. Did you speak to anyone with regard to the trip?

A. No one but the crew.

Q. Later on did you speak to any of the people who were going to go on the trip?

A. No, sir.

Q. Well now do you remember what time on February 28th you left Miami on the trip?

A. It was around 5:30.

Q. 5:30 in the afternoon?

A. Yes, sir.

Q. Now prior to leaving Miami did you obtain any supplies?

A. Yes, sir.

Q. What supplies did you obtain?

A. Groceries and four quarts of Gilby's gin.

576 Q. With whose money did you obtain that?

A. Mr. Yeiser's money.

Q. You kept that during the trip, did you?

A. What time it was kept I did; it wasn't kept so long.

Q. Did you give it out during the trip?

A. Yes, sir.

Q. Now were the members of the party Mr. Yeiser and Mr. McKay and Mrs. Just and Miss Grunow? Do you remember them?

A. Yes.

Q. Now did Mr. McKay say anything to you about going on that trip?

Mr. Mershon:

Now the time has come when I must object to him leading his witness. I object to that question because

it is leading and I move to strike the same on that ground.

Mr. Parmer:

I will consent. Very well, I will desist from any leading questions and will take the time necessary to do it otherwise.

Q. Now where did the vessel proceed after leaving Miami?

A. Featherbed Shoals.

Q. How long did it remain there?

A. Until the next morning.

Q. I might first ask you what time it arrived at Featherbed Shoals, if you can remember?

A. I would say somewhere around eight or
577 eight-thirty.

Q. What time did you leave Featherbed Shoals?

A. Six-thirty the next morning.

Q. And where did you go?

A. I went down to what I call Card Sound Cut.

Q. How long did that take you?

A. That taken me, as best I remember, about one hour and twenty minutes.

Q. What did you do when you got there?

A. Anchored.

Q. How long did you remain there?

A. I remained there until Sunday night about 7:10 or 7:15, somewhere in there.

Q. What did you do on Sunday night?

A. I went down to Featherbed Shoals.

Q. When you got to Featherbed Shoals what did you do?

A. Anchored.

Q. How long did you remain there?

A. Until the next morning.

Q. The next morning what did you do?

A. Pulled up anchor and headed for Miami.

Q. Now on Sunday what did you do while you were anchored in that place where you were before you came to Featherbed Shoals? I have forgotten the name for the moment.

The Court:

Card Sound.

A. We went fishing.

Q. How many boats were used to go fishing?

A. Two fishing boats.

578 Q. I take it that you had charge of one?

A. Yes.

Q. Who had charge of the other?

A. The Chief Engineer.

Q. Who was in that boat in which you were fishing?

A. I had the whole party—Mr. McKay, Mrs. Just, Miss Grunow and Mr. Yeiser.

Q. Now during the entire time that you were fishing were all of those parties in your boat?

A. They changed after they got to the stream.

Q. Tell us how they changed.

A. Well, a little boat came along the side and it was very rough—

Q. Just tell us how they changed.

Q.[A.] Mr. Yeiser got over in the boat with the Chief and Miss Grunow.

Q. Who remained in your boat?

A. Mr. McKay and Mrs. Just.

Q. How long did you remain fishing with Mr. McKay and Mrs. Just?

A. About an hour.

Q. Now at the end of that time what did you do?

A. Well, we had to come back; Mrs. Just got awfully seasick.

Q. Did you observe her at the time you saw or say she became seasick?

A. Yes.

Q. What did you observe about her?

579 A. She was green in the face.

Q. Did you speak to her in regard to it?

A. Yes.

Q. What did she say to you?

A. I never spoke to her right then.

Q. Later on did you speak to her?

A. Yes.

Q. When was it that you did speak to her?

A. After we got back into smooth water.

Q. What did you say to her?

A. I told her that she had better take some purgative medicine that night.

Q. Did she say anything when you said that?

A. She said she would.

Q. Did you have purgative medicine on the ship?

A. Yes, sir.

Q. How long was it after that conversation that you returned to the big boat?

A. Probably an hour and a half.

Q. About what time was that?

A. That was just before—I would say around six o'clock.

Q. When you arrived at the boat what did the people do, that is, Mr. McKay and Mrs. Just?

A. That is when they all got out and went below.

Q. What did you do?

A. I tied my boats up and went forward.

Q. Now did you see either one of the four
580 composing the party again that Sunday night?

A. I don't just understand that.

Q. Did you see either Mr. Yeiser or Mr. McKay or Mrs. Just or Miss Grunow any more that Sunday after they returned to the boat?

A. After I had dinner.

Q. And where did you see them then?

A. In the deck-house.

Q. Is that what is called the salon?

A. Yes, sir.

Q. What time did you see them then?

A. I would say around ten o'clock.

Q. And where were you?

A. I was in bed.

Q. And where is your bed with reference to the salon?

A. Just right next to the windows separating the salon from the pilot house.

Q. And from your bed is there any way in which you can look in the salon?

A. Yes, sir.

Q. What is it?

A. Two big windows.

Q. How close to your bed?

A. About as far as from here to there (pointing).

Q. You mean from that chair to the rail where the Judge is sitting?

581 A. Just about five feet.

Q. Do I understand you correctly that that distance you mentioned is the distance from your bed to the window?

A. No, the distance from the bed to where the card tables are at.

Q. What I want to know is where your bed is in relation to the window or windows?

A. Right against them.

Q. And this distance of five feet is where certain card tables are in the salon?

A. Yes. I thought you meant where I saw the party.

Q. First I want to know where the windows are or window?

A. Right beside my bed.

Q. What did you see Mr. Yeiser and Mr. McKay and Mrs. Just and Miss Grunow doing?

A. Playing cards.

Q. I take it at the card tables that you referred to before?

A. Yes, sir.

Q. What did you see on the table besides cards?

A. Well, I judge it to be—

Q. Don't judge it to be anything; tell us what you saw and let us judge what it was?

A. I seen glasses sitting on the table and I saw them drinking.

Q. You say you saw that about ten o'clock at night?

A. From about ten o'clock until about one, I guess.

Q. You were looking at them all the time?

582 A. Oh, no. I was trying to go to sleep.

Q. Did you finally get to sleep?

A. Not until they went to bed.

Q. Was there any reason that you couldn't sleep?

A. Sure.

Q. What was it?

A. The folks were having what I would call a nice party in there, see.

Q. How did that affect your sleep?

A. I don't guess any one could sleep when they were having a good party and being that close to it.

Q. You are envious?

A. No, sir.

Q. What was there about the party that kept you awake?

A. The noise.

Q. Will you tell us what noise you heard?

A. Well, the folks were having a big time in there, just like any people going out and playing cards and drinking, and when you are drinking and playing cards and talking naturally you talk loud.

Q. And that went on until around one o'clock, you say?

A. Yes.

Q. And the next morning you were informed in regard to the two women being found in their beds?

A. Yes, sir.

Q. Just tell us whether you were or not?

583

A. I said yes.

Q. Where was the vessel at the time and what were you doing?

A. She was in Biscayne Bay.

Q. At the time that you were informed in regard to the women in their beds, about how long in time, if you can give it to us, had the boat been running from the place where she started?

A. It couldn't have been over an hour and 20 minutes or 30 minutes, something like that.

Q. What did you do when you received word that these women could not be aroused?

A. I was sent for.

Q. Who came to you?

A. The colored boy-waiter.

Q. What did you do then?

A. He told me.

Q. What did you do then?

A. I went down below.

Q. When you went down below where did you go?

A. To the girls' room.

Q. Did you see the girls there?

A. Yes, sir.

Q. Where were they?

A. They were laying on the two beds.

Q. One on each bed you mean?

A. Yes, sir.

584

Q. Did you do anything with regard to the girls?

A. Yes.

Q. What did you do?

A. Picked them up and carried them on the deck, upper deck.

Q. While you were there did you see Mr. McKay?

A. Yes, sir.

Q. What did he say?

A. He told me that the girls had monoxide gas.

Q. Did you say anything to him?

A. I told him if the girls had monoxide gas that they would be knocked out when they were carried up in fresh air.

Q. That is your idea of the affects of carbon monoxide gas?

A. Yes, sir.

Q. You told him that at the time?

A. Yes, sir.

Q. Did you engage in carrying the girls up?

A. Yes, sir.

Q. Just one girl or both?

A. One at a time.

Q. Who else assisted?

A. The colored boy and I think Mr. McKay helped us some.

Q. Did you observe how the girls were dressed?

A. Yes.

Q. How were they dressed?

A. Dressed in night-clothes.

Q. Did you observe whether the night-clothes
585 were dry?

A. Yes, sir.

Q. In what condition were they?

A. They were wet.

Q. Do you mean in the case of both girls?

A. Yes, sir.

Q. What brought that to your attention?

A. Picked the girls up myself; I carried the girls just like this and I could tell it.

Q. How could you tell him?

A. With my hand.

Q. I say how could you tell?

A. With my hands.

Q. You mean you felt it?

A. Yes, sir.

Q. Did you observe the beds from which you took the girls?

A. Yes, sir.

Q. In what condition were they?

A. Wet.

Q. You mean in both cases?

A. Yes, sir.

Q. Now while you were bringing Mrs. Grunow or Miss Grunow up the stairs did anything occur?

A. Bumped her head.

Q. You mean to say you bumped her head?

A. I did but I didn't mean to; I just bumped her head on the corner of the rail there; just touched it; 586 didn't bump it very hard.

Q. When she bumped her head did she say anything?

A. Yes, sir.

Q. Do you remember what it was she said?

A. I don't remember, no, sir.

Q. Was what she said in the form of words or was it a groan or something like that?

A. It was a mumble.

Q. It was a mumble?

A. Yes, she mumbled it.

Q. Now what did you do with the girls when you brought them upstairs?

A. I put Mrs. Just in Mr. Yeiser's room.

Q. Mrs. who?

A. Mrs. Just.

Q. In Mr. Yeiser's room?

A. No, it was Miss Grunow.

Q. Which was Miss Grunow; what kind of hair did she have?

A. She had yellow hair; I didn't take much notice of her hair, but I think it was kind of yellowish and reddish hair.

Q. You say you put Miss Grunow in Mr. Yeiser's room?

A. Yes.

Q. Whereabouts in the room did you put her?

A. On the bed.

Q. Where did you put Mrs. Just?

A. On the back deck. We had a big couch
587 back there.

Q. Did you put some blankets on the women?

A. I didn't.

Q. But were some blankets put on them?

A. Yes, sir.

Q. After that where did the boat proceed?

A. To Miami.

Q. While you were proceeding up the bay to Miami did you have any talk with Mr. McKay?

A. Yes, sir.

Q. Did you receive any instructions from him?

A. Yes.

Q. What were they?

A. He told me to say nothing about that accident.

Q. To say nothing?

A. And to inform all of the crew.

Q. Inform all of the crew?

Mr. Mayne:

I didn't hear that.

A. He told me to say nothing about it and inform all of the crew.

Q. Inform all of the crew what?

A. To not say anything about this accident?

Q. Not to say anything to anybody else or not to talk it over among themselves?

A. Not to talk it over with anyone else.

588 Q. Now at the time that Mrs. Just was put upon the rear part of the boat what was the condition of the curtains surrounding?

A. They were all open.

Q. What did you do before you arrived in Miami with regard to these curtains?

A. Put the curtains down.

Q. And the effect of that was what, when you put the curtains down?

A. So no one could see them, I suppose.

Q. At whose direction did you do that?

A. Mr. Yeiser and Mr. McKay's; Mr. Yeiser usually gave the orders.

Q. How long after you arrived in Miami did you send for a doctor?

A. Just as quick as I could.

Q. How soon thereafter did the doctor come?

A. I don't believe he was over 30 minutes getting there.

Q. Now when he did come were you there while he was looking after the ladies?

A. Yes, sir.

Q. Did you observe Mrs. Just?

A. Yes, sir.

Q. Will you describe what you saw with regard to her?

A. Mrs. Just appeared to be pretty sick; she looked like a very sick person to me.

Q. Well did you see her doing anything?

A. No, sir.

Q. Did you hear her doing any talking?

589 A. No, sir.

Q. Were you there all of the time that the doctor was treating her?

A. Not all of the time, no, sir; I was on the boat; I wasn't back there.

Q. When you say "back there" do you mean back aft where Mrs. Just was?

A. Yes.

Q. Did you see Miss Grunow while she was in Mr. Yeiser's room?

A. Yes, sir.

Q. What did you observe with regard to her condition?

A. I observed her to be sick, but she wasn't very sick; just a few minutes after I put her on deck she was talking.

Q. Did you talk to her and did she talk to you?

A. I heard her talking to Mr. Yeiser and Mr. McKay as best I remember; I know it was Mr. Yeiser because he was in the room.

Q. You heard her talking with him?

A. Yes, sir.

Q. Was that about the time that the doctor arrived, or after or before?

A. It was before, I am sure.

Q. How long was it before Mrs. Just left the vessel?

A. Mrs. Just left as best I remember—I couldn't tell you just what time she left, but she left there about around eleven o'clock, although I wouldn't say for sure,
590 because I was awfully busy.

Q. Well now up until the time that she left the vessel did you have any occasion to observe her?

A. I went back there with the doctor.

Q. At the time that she did leave the vessel did you see any change in her condition from what it had been when you brought her out?

A. Yes, sir.

Q. What change did you observe; just what change did you then observe?

A. I saw her turn up and look—

Q. What is that?

A. Look up.

Q. What?

A. She was laying down and she rolled over and looked at the doctor and I when we walked up.

Q. She didn't say anything, did she?

A. No, sir.

Q. Well now do you recall seeing Miss Grunow during the rest of the day on board the ship?

A. Yes, sir.

Q. About how many times during the rest of the day and up until the time that she finally left did you see her?

A. Not over three or four times.

Q. What time did she finally leave the vessel?

591 A. Somewheres around nine o'clock.

Q. Now at any of these times that you did see her before she left did you have any talk with her?

A. No, sir.

Q. What is that?

A. No, sir.

Q. Well, at the time that she was leaving did you speak to her or did she speak to you?

A. She spoke to me.

Q. She did?

A. Yes, sir.

Q. Will you tell us where that conversation took place?

Mr. Mayne:

Who was this, Miss Grunow or Mrs. Just?

Mr. Parmer:

Miss Grunow.

A. Outside of Mr. McKay's car.

Q. Had you been with her on the boat prior to coming to the car?

A. No, sir.

Q. I do not mean had you been with her in any sense except that you were along side of her. Did you see her on the boat before she left?

A. Yes, sir.

Q. Where did you see her?

A. In Mr. Yeiser's room.

Mr. Mayne:

This is all repetition. He has already testified to that.

592 Mr. Parmer:

I am trying to bring out what happened around nine o'clock. The other evidence was in connection with things that happened earlier in the day.

The Court:

You may proceed.

Q. I want to know did you see her around nine o'clock, just before she left on that day?

A. Yes.

Q. Were you in a room when you saw her?

A. There was windows all around the room, but you could see her in there and hear her talking.

Q. Could you hear her talking?

A. Yes, sir.

Q. Did you hear what she said at that time?

A. She said she wasn't going home.

Q. With whom was she talking?

A. With Mr. Yeiser I am sure.

Q. Was anybody else in the room that you remember?

A. Not that I remember.

Q. Well now when she finally did leave the boat who accompanied her to the gangplank?

A. I did.

Q. Did you have any talk with her as you were accompanying her to the gangplank?

A. No, sir.

Q. In what condition was she as she was leaving the vessel?

Mr. Mayne:

Conclusion of the witness.

593

Mr. Parmer:

I will withdraw the question.

Q. Did you observe anything with regard to Miss Grunow that was unusual as she left the vessel and you were with her?

A. Well, I told you that Miss Grunow acted like she was—

Mr. Mershon:

That is objected to.

The Court:

I do not see how he can do it otherwise. The objection is overruled.

A. She acted like a person two-thirds drunk.

Mr. Mershon:

I object to that as being a conclusion of the witness—two-thirds drunk.

Q. Well, we will see how he governs his percentage in that respect. When is a person two-thirds drunk in your opinion?

A. When they can't go.

Q. When they can't walk?

A. Yes.

Q. She could walk, so therefore you would say she wasn't that bad?

A. Yes, sir.

Q. What did you observe about her which gave you the information or opinion that she was as bad as you thought?

A. I saw her drinking.

Q. Whereabouts did you see her when she was drinking?

A. In Mr. Yeiser's room.

Q. What time was that?

A. That was all through the day after she roused up.

Q. Did you see her during the night doing any drinking?

A. There wasn't very much—

594 Mr. Mershon:

I object to that unless he knows what she was drinking. Let's see whether he actually knows that she was drinking intoxicating liquor. I do not think he has the right to draw this inference because he may have seen her drink something out of a glass.

The Court:

I think that is for the Court to determine as best it can from all of the evidence. I think the objection is not well taken and it is overruled.

A. That was awfully early; she went ashore at nine o'clock.

Q. You mean by that you didn't see it in the evening?

A. Not after it got dark; no, sir.

Q. What I want you to do is to be perfectly fair to Miss Grunow, and instead of saying "two-thirds drunk", being your own interpretation of it, tell us what you saw about her that made you think she was intoxicated?

A. Well, I smelled her breath; her breath was very strong with liquor.

Q. What did you observe about her manner of walking, if anything?

A. I had to help her along.

Q. You had to help her?

A. Yes, sir.

Q. You had to help her from where to where?

A. Out of Mr. Yeiser's room and down the gangway to Mr. McKay's car.

Q. Did you go with her to the car?

A. Yes, sir.

595 Q. Did she say anything to you then?

A. Yes.

Q. What did she say to you?

A. She told me—she says "Tell Henry good-bye and this is not the last of this". I told her right then that she should be ashamed of herself.

Mr. Mayne:

Tell who good-bye?

The Witness:

"Tell Henry good-bye".

(By Mr. Parmer):

Q. Was Mr. McKay with her then?

A. He was sitting in the car.

Q. Didn't he come on the boat?

A. I don't remember; maybe he did. The boy came and told me that Mr. McKay was there.

Q. Tell me, Captain, had you ever had any trouble with motor fumes on the Friendship II?

A. Yes, sir.

Q. Will you tell us the nature of the trouble?

A. It was awfully bad at times; when we had a stern wind most especially; it would blow the wind back into the back, and it would naturally blow them any other way.

Q. Now do you remember an occasion when Mr. Yeiser's two boys were affected by such fumes?

A. Yes, sir.

Q. Do you remember when that happened?

A. I don't remember the exact date.

Q. Do you remember the month?

A. Sometime in September.

596 Q. Of what year?

A. 1936.

Q. Well he was dead then. You see this thing happened March 2, 1936.

Mr. Mayne:

"I think it is testing the memory of this witness and Mr. Parmer.

Mr. Parmer:

Thank you. I wasn't certain as to the date.

The Court:

You may proceed with the examination.

(By Mr. Parmer):

Q. Now tell me was it at any time prior to going on this trip?

A. Yes, sir.

Q. That this accident to the two boys occurred?

A. Yes, sir.

Q. In September I think you said it was?

A. September.

Q. Well now will you tell us what you saw of that accident; did you see any part of it?

A. Yes, I saw one of the boys laying in the dining room and I picked him up and carried him and put him on the back deck.

Q. You don't know where he had been before?

A. He had been back in the after-stateroom studying his lessons.

Q. What happened to the other boy?

A. He got a little sick; it was awfully rough that day and I think he got gas off of the stern of the boat or somewhere around on the boat.

Q. As a result of that did you receive any
597 orders from anybody?

A. I had right along.

Q. What orders had you received right along and what orders were given then?

A. To see that the after-windows were closed always by Mr. Yeiser.

Q. Were any orders given with respect to the exhaust pipes?

A. No, sir.

Q. You did not receive any orders from him, did you, at that time?

A. No, sir.

Q. Well, now did Mr. Yeiser ever say anything to you about what should be done with the exhaust pipe?

A. Yes, sir.

Q. What did he say?

A. That it should be run through the top into a stack.

Q. When these girls were brought back after this trip did Mr. Yeiser do anything or make any provision with regard to the exhaust pipes at that time?

A. That same morning.

Q. What did he say?

A. He told me to go out and get some men and get an estimate on that, and that he was going to put these exhaust pipes out through the stack.

Q. Had you been Captain for him on the Friendship I?

A. I sold it to him.

598 Q. You sold it to him?

A. Yes, sir.

Q. After you sold it to him were you captain on it for him?

A. Yes, sir.

Q. Had you had any trouble with the exhaust pipes from the outside there?

A. Yes.

Q. Where were the exhaust pipes on that boat?

A. On the side.

Q. What experience did you have with them on that boat?

A. She exhausted awfully bad.

Q. By that you mean what?

A. The gas would come back on top of the deck and lots of times you would have to get away from it.

Q. What did Mr. Yeiser do with regard to the exhaust pipes on that boat?

A. Put them up through the stack.

Q. When you were captain of the boat Friendship II prior to March 2, 1936 did you ever have any knowledge or notice that there were any holes in the exhaust pipes?

A. No, sir.

Q. You know that following a return to Miami a hole was found in one of them, do you not?

A. Yes.

Q. Did you have any knowledge that that existed prior to the vessel being on this trip?

599 A. No, sir.

Q. I think you said, Captain, that on Sunday morning early you went from Featherbed Shoals to Card Sound, is that right?

A. Yes, sir.

Q. Now at the time that you made that trip were any of the passengers up on the boat?

A. Not that morning; that was way after I anchored.

Q. That is, they got up after you anchored?

A. Yes, sir.

Q. How long again did that trip take you?

A. One hour and twenty minutes.

Q. How long after you anchored did the passengers get up?

A. I don't recall, but they had an awful late breakfast.

Q. Now did you receive any complaints during Sunday that anybody had been affected by any gas?

A. No, sir.

The Court:

When you left Miami was it on Friday or Saturday?

The Witness:

Friday afternoon.

The Court:

What happened all day Saturday?

The Witness:

We went fishing.

The Court:

You described Sunday. Now what happened on Saturday?

The Witness:

They went out fishing. Mr. McKay and Mrs. Just and the Chief went "bone fishing".

600 The Court:

Where was the boat then?

The Witness:

It was at Card Sound.

(By Mr. Parmer):

Q. Then you were at Card Sound on Saturday, was it or on Sunday?

A. Saturday and Sunday.

Q. You got there Saturday, was it?

A. Saturday morning.

Q. Saturday morning?

A. Yes, sir.

Q. And you remained at Card Sound during Saturday, during Saturday night and during the following Sunday and that Sunday evening, is that right?

A. Yes, sir.

Q. And then on Sunday evening you returned to Featherbed Shoals?

A. Yes, sir.

Q. Then it was on Saturday morning, was it, that you went from Featherbed Shoals to Card Sound?

A. Yes, sir.

Q. And that trip occupied one hour and 20 minutes?

A. Yes, sir.

Q. Now do you know in which stateroom Mr. McKay slept?

A. The port stateroom.

Q. How do you know that?

A. I seen his luggage, tooth brush and his belongings in there.

Q. In the port stateroom?

A. Yes, sir.

601 Mr. Mayne:

That is objected to as a conclusion of the witness, Your Honor. Just seeing a man's luggage in that room does not indicate that he slept there. He could have had his luggage in one room and slept in another room.

The Court:

We do not have a jury here. The witness says he slept in the port stateroom, and when asked how he knew that he said he saw his luggage in there. The question is certainly competent, so the motion to strike is denied.

(By Mr. Parmer):

Q. On the trip back from Featherbed Shoals to Miami what was done with these two boats that you used for fishing?

A. I tried to tow the two boats, but the cruiser had no towing rope on it; it was brand new, and I had to run one—let one of the other boys run one in, and he took the other boat in too.

Q. Who was that?

A. Chubby Mickle.

Q. What job did he have?

A. I used him as my mate on the boat; he didn't have no license or anything but I used him as my mate on the boat.

Q. Now, Captain, during this trip which began on the 28th and ended in Miami on March 2, 1936, did you observe Mr. Yeiser?

A. Yes, sir.

Q. Now what did you observe his condition to be so far as sobriety is concerned?

A. Noticed Mr. Yeiser was drinking, drinking awfully heavy again.

Q. What did you observe about him that indicated that to you?

A. His legs began to go bad on him again.

Q. Tell us how he walked?

A. His legs couldn't hold him up; he had to hold by his hands; he had to hold on to the rail of the boat because his legs were very weak.

Q. Did you see him on only one occasion during the three days of this trip or on more than one occasion?

A. For the whole seven as far as I know.

Q. I don't think you understood my question. I am talking about this three-day trip. I want to know if you saw him once or did you see him more than once during this three-day trip?

A. I noticed him Friday night, the afternoon before we left and then the whole trip; I noticed him getting worse the whole trip.

Q. You mean to say that he got worse as the trip progressed?

A. Yes, sir.

Q. Now on March 2nd when this boat returned from Featherbed Shoals will you tell us what his condition was on that morning?

A. Well, the man was a very sick man; he couldn't get around but very little; he was a very sick man and he told me that he was sick.

Q. What was his condition as far as sobriety was concerned that morning?

A. He began to drink again.

Q. When he was out fishing did you observe
603 Mr. Yeiser have any accident?

A. Well, I noticed he got his leg caught between the two boats, when he went to pass from one boat to the other.

Q. You mean from one small boat to the other?

A. Yes, sir.

Q. How was the sea at the time he did that?

A. It was a very heavy sea.

Q. Did anybody else attempt to go from one boat to the other at that place?

A. No, not when he started.

Q. Did anybody assist him at the time?

A. I did my best to assist him.

Q. What do you mean by that?

A. I "knewed" that the man was going to get killed in there, it looked like to me and the water was awfully rough, and I asked him not to get in there and he said he was going to change over; I asked him not to get over in the boat, because it was something that he never did before and he fished with me every time.

Q. What was his condition at that time?

A. The man was just as drunk as could be; he had to have assistance to get around.

Q. Now on any of these fishing trips while you were using these boats did you see any of the people, that is, any of the four people I have mentioned, Mrs. Just, Miss

604 Grunow, Mr. McKay or Mr. Yeiser do any drinking?

A. Saturday morning before I went out Mr. Yeiser and Miss Grunow got in the boat and had the colored waiter hand them a bottle of wine.

Q. Where were they at that time?

A. They were in the cruiser.

Q. Was the cruiser alongside of the big boat?

A. Yes, sir.

Q. Did you see what they did with the bottle of wine?

A. They drank it.

Q. Did you see them?

A. They drank all but about two small drinks of it, and it was put in the ice-box and Mr. Yeiser drank that that evening.

Q. Did you see them drinking it?

A. Yes, sir.

Q. Now then, Captain, tell us about the log books you kept on that vessel. I show you Petitioner's Exhibit 2 and will ask you if you know what that book is?

A. Yes, sir.

Q. Tell us.

A. This is the log book I had the engineer keep especially for me.

Q. If you will look at it you will find that it goes from January 1st on.

A. Yes, sir.

Q. Until you severed your connection with the boat, is that right?

A. Yes, sir.

605

Q. Did you understand that question, Captain?

A. I didn't keep this book at all.

Q. The engineer kept it for you?

A. This is my private book, private-log book.

Q. Was there another log book which preceded this one?

A. No, sir.

Q. Do you understand what "preceded" means?

A. You mean if there was another log book on the boat?

Q. No, I mean to say that before you started this book did you have another log book before it?

A. Yes, sir.

Q. Do you have any system with respect to having log books in accordance with years?

A. No, sir.

Q. But you did have a log book for this one?

A. Yes, sir.

Q. What became of that log book?

A. I have an idea I burned it up. I burned up all of my bills and everything excepting this book, because this book would have to be kept; all this was kept for was for the Underwriters; they had me to carry a log book.

Q. That was the latest book?

A. Yes, sir.

Q. When did you finally sever your connection with the Friendship II; when did you finally leave the employ of anybody on that boat?

606

A. Sometime in October.

Q. Of what year?

A. 1933.

Q. At the time when you left did you have an accumulation of papers on board the ship? Do you know what I mean?

A. No, sir.

Q. I think I am using big words here.

A. What I had I took off.

Q. What did you do with them after you took them off?

A. I burned all of my bills and everything.

Q. What bills?

A. I paid all bills on the boat; I had to look out for all bills.

Q. You mean to say that you disbursed money for Mr. Yeiser?

A. Yes, sir.

Q. Then if Mr. Yeiser wanted to get money he had to come to you?

A. Yes, sir; he did in the last year; when he was put under the Probate Court he had to come to me for money.

Q. You had a fund of money here?

A. Yes, always.

Q. So you could give it out to him?

A. Yes, sir.

Q. You paid such bills with the money in your possession and those bills were burned up?

A. Yes, sir.

Q. You also think you burned up the log book preceding this one?

607 A. I destroyed that log book about the same time I got this one; it was destroyed over here in Flamingo Dock. I remember that the Chief came over there and brought this one, so I didn't have the other one since then; I never carried one myself; the engineer took care of it.

Q. Now, Captain, did you make measurements of the room, that is, the stateroom, the after-stateroom in question, in connection with this test that was performed in the summer of 1936?

A. What?

Q. Did you make measurements of that after-stateroom?

A. Yes, the Chief and I did.

Q. In other words, you had a tape measure?

A. Yes, sir.

Q. And you and the Chief handled it and made the measurements?

A. Yes, sir.

Q. Now I show you a blueprint, Chief, and I will ask you if you can tell us what that is?

A. This is a blueprint of the Friendship.

Q. You mean the Friendship II?

A. Yes, sir.

Q. Will you look at it and tell us if it represents substantially the layout of the different rooms on the cabin deck and on the main deck?

A. Yes, sir.

Q. I am not asking you whether it is drawn to scale. You did not prepare this yourself, did you?

A. I had it done.

Q. You didn't make all of the measurements
608 on the basis of which this blueprint was drawn up, did you?

A. No, sir.

Q. But it does represent substantially the layout of the different rooms?

A. Yes, sir.

Mr. Parmer:

For that purpose I wish to offer it in evidence.

The Court:

I think you would have made better progress if you had done that two or three days ago?

Mr. Mershon:

We asked for a plan about two or three days ago and they said they didn't have it.

Mr. Parmer:

I did not have it here; I had to get it from New York.

Mr. Mershon:

I would like to ask the witness with reference to the original drawing from which this blueprint was made.

By Mr. Mershon:

Q. Where is the original drawing from which this blueprint was made?

A. Fort Meyers.

Q. Is it in your papers, in your possession?

A. No, I never kept it.

Q. Who has it now?

A. A man over there that makes them; I will have to get you his name.

Q. This blueprint bears your name. Did you
609 do the actual drawing on it?

A. No, sir.

Q. Who made that drawing?

A. A fellow by the name of Fred Diehl at Fort Meyers.

Q. Did he go on the boat and take some measurements?

A. Yes, sir.

Q. Did he prepare to make that drawing from looking at the boat and measuring the boat?

A. Yes, sir.

Q. In other words, did he survey the boat in order to make that blueprint, or sketch rather?

A. Yes, sir; he is a regular architect. Doesn't that give the date when it was made?

Q. Yes. How long after Mr. Yeiser had acquired the boat was it that you had this sketch made?

A. I don't remember just when it was, but I know he wanted to charter the boat and he wrote me and asked me to have this made for him.

Q. You don't say, do you, that this sketch purports to show in detail the layout of the boat, but it is just a general outline?

A. It is a sketch; it is given to you on a scale there.

Q. For instance, on the after lower deck, known as the main deck, as a matter of fact there is a lazaret, that

is, a vent of some kind but that is not shown on this sketch, is it?

A. Yes.

610

Q. Is there a main-hall there?

A. He didn't draw that in.

Q. There are a lot of details like that not shown on there?

A. He didn't take the furniture and put it on there, no.

Q. There are many details like that not shown on here?

A. Yes.

Q. Then this does not purport to be a detail plan or specifications of the Friendship II, does it?

A. It is a detail sketch made of the boat to give you an idea of those who were going to charter the boat.

Mr. Mershon:

If Your Honor please, we object to its introduction in view of the testimony of the witness. We have no objection to its introduction as a general outline of the layout.

Mr. Parmer:

That is what I offered it for.

Mr. Mershon:

We have no objection to its being admitted as a general outline of the layout of the boat, but we object to it as showing the relative location of the staterooms and the engine-room. We do not admit the accuracy of the sketch, nor do we admit that it purports to show the details of the boat and its equipment; for instance, we say that it does not purport to show the location of the exhaust pipes or the cross-members—

611

The Court:

It does not show the structural condition down below the floor-boards?

Mr. Mershon:

No, sir.

The Court:

It certainly is incomplete, but if you gentlemen want it to go in to show the general outline, there seems to be no objection to that. It certainly is incomplete and it is not testified to by the man who made the measurements. If you want it to show the general outline of the layout, it can go in for that purpose.

Mr. Parmer:

And to show where the rooms were in relation to each other.

(Thereupon the sketch above referred to was marked PETITIONER'S EXHIBIT No. 3.)

(By Mr. Parmer):

Q. Now, Captain, does this show where your bunk was in relation to the salon?

A. It gives you a sketch of it.

Q. That area there marked "Captain's bunk"; that is, where you were laying when you looked into the main salon, is that right?

A. That is right.

Q. And this area marked "Cabin" here on the plan of the cabin-deck on the aft part of that plan, is that the cabin where the ladies slept?

A. Yes, sir.

Q. Which cabin was it that Mr. McKay used?

A. Down here (indicating).

612 The Court:

Put a mark on that. Let him put a mark on there to identify it.

Q. Mark it with the letter "A".

A. (Witness complies).

Q. Now is that "A" the cabin which was occupied by Mr. McKay?

A. Yes, sir.

Q. Now did you make measurements yourself of this aft cabin?

A. Yes, sir.

Q. When did you make your measurements—you and the engineer?

A. That was after this trip, after this happened.

Q. Do you know the month in which you made the measurements?

A. No, sir, I didn't keep any track of it.

Q. Now do you know what the measurements of the room were according to what you ascertained at that time?

A. That is a pretty hard thing to remember. I will say 15-feet in beam.

Q. Tell me if as a result of making these measurements you sent a telegram to Mr. Coleman?

A. Yes, sir.

Q. Advising him with regard to the measurements?

A. Yes, sir.

Q. Will you look at this telegram and use it to refresh your recollection and tell us what you found the measurements to be when you measured the aft state-room on the Friendship II:

A. You want me to tell you what it was?

Q. I want you to tell me what those measurements were, if that telegram serves to bring it back to your mind?

A. Yes, it does.

Q. What is that?

A. It brings it back.

Q. How wide was the room, that is, going from one side of the vessel to the other side of the vessel?

A. 15 feet.

Q. What was the dimension of the room in the fore and aft direction?

A. Nine feet and four inches.

Q. What was the dimension of the room from the floor to the ceiling?

A. Six feet four inches.

Q. Captain, in taking that measurement of that room, did you note how the sides of the boat came in as you go further aft?

A. Yes, sir.

Q. Whereabouts on the side wall did you run your tape in order to measure the athwartship dimension of the room?

A. I taken the widest place right next to these two clothes-lockers; that was the widest place there.

Q. Would you say that was the place where the clothes-lockers are that you referred to?

A. Yes, sir.

Q. All right, will you mark an "X" on one of them and an "X" on the other one?

A. (Witness complies).

614 Q. Do you mean that it was between the two X's that you measured the room?

A. Yes.

Mr. Mershon:

Where are those X's?

Mr. Parmer:

They are on here.

Mr. Mershon:

We would like to see them and show them to the Court.

Q. Captain, you say you had four bottles of gin when you started on this trip?

A. Yes, sir.

Q. Tell me what you did with the four bottles of gin?

A. I gave them out to the colored waiter.

Q. Did you give them out all at once to him?

A. No, sir; when he would get out he would come and tell me about it and I would give him another one.

Q. Did you have any of these four bottles of gin in your possession at the time that you returned to Miami?

A. No, sir.

Mr. Parmer:

That is all for now.

Cross Examination.

By Mr. Mershon:

Q. Captain Roberts, how long had you known Henry C. Yeiser?

A. Ten years.

Q. Was the occasion of your first meeting him when you went to work for him?

615 A. I used to charter to him.

Q. You mean you chartered your boat to him?

A. Yes.

Q. And you later sold your boat to him and became his captain?

A. Yes, sir.

Q. As a matter of fact, in addition to being his captain you were rather close personal friends?

A. The best friend I ever had.

Q. As a matter of fact when he died in his will he canceled a loan which he had made to you of some several thousand dollars, secured by a mortgage on your home?

A. Yes, sir.

Q. When you first met him was he given to drinking as much as he was in later years?

A. Yes, sir.

Q. He had always been a heavy drinker?

A. Yes, sir.

Q. Had you throughout the ten years had about the same trouble fighting with him to keep him from drinking?

A. Only after I went to work for him.

Q. You did not assume that responsibility until after you actually went to work for him?

A. No, sir.

Q. About how many years was that?

A. I chartered to him two years before he bought the boat.

Q. So that would be approximately four years
616 before March 1, 1936; it would be approximately four years?

A. He bought the boat in 1930.

Q. From you?

A. Yes, sir.

Q. So it would have been practically six years, five or six years?

A. It was over six years, I would say.

Q. During that time did he keep up his extra-heavy consumption of liquor or would he take a treatment and sober up?

A. Take a treatment and sober up.

Q. And then he would go back again?

A. Yes.

Q. Would he do that without any apparent reason?

A. Well, his only reason I guess was to try to get sober.

Q. What would be his reason on each of the occasions to go back to his drinking in full force again?

A. The doctors or no one else could do anything—the way I judged was that his drinking was a disease.

Q. So what people said to him or did to him didn't have anything to do with out; it was this uncontrollable desire, was it?

A. That is what I would say.

Q. At the height of his sprees or drinking activities did you have occasion to know how much liquor he would drink in a day or in 24 hours?

A. Yes, sir.

Q. How much would that be, if you know?

617 A. When he was drinking the way you figure it there it would run around four quarts in 24 hours.

Q. How many days at a time could he keep that up?

A. I would say he kept it up for 30 days at a time.

Q. Then what would happen?

A. He would just get so low that he couldn't drink anymore; if I had him I would try to get him somewhere or get a doctor to him and I would cut his liquor down. The doctor always told me not to take it all away from him, but to take it in hand and do just as best I could. He was very mean about his drinking, but when he got sober he was very civil and it seemed like he would try to make an effort to quit but he never could.

Q. Then could you take him in hand and curtail his drinking or taper him down?

A. I would take him away on quite a few trips.

Q. How long would it take you to bring his consumption of four quarts in 24 hours down to the minimum amount?

A. It wouldn't take over three or four days.

Q. What would be the minimum amount he would take in 24 hours when you brought him down from four quarts?

A. Probably a quart of gin, or six or eight bottles of beer, or maybe a dozen bottles of beer a day.

Q. That was the lowest you ever knew him to take?

A. No, I have had him perfectly sober.

Q. Where he didn't take a bit of liquor?

618 A. I would have to take him down in the Shark River country.

Q. What would be his nervous condition?

A. Looked like he couldn't stand it, but if I seen that he had to have it, if it looked like he was going to lose his mind, I would always give him a drink.

Q. You undertook to rather measure it out to him under those circumstances?

A. Yes, sir.

Q. When you say you threw the liquor overboard you mean you still had some in reserve to give him?

A. Yes, sir; just to keep from lying to him; I just did everything I could.

Q. When you said you threw the liquor overboard and then he would want to go to Key West or Miami, you mean that he wanted to go there for new supplies of liquor?

A. No, he always had something.

Q. In other words, he didn't have to go to Miami or to Key West to get liquor?

A. He didn't have to come to Miami for liquor.

Q. But when he got here he would order liquor?

A. That was the first thing that was ordered when I tied up at the dock.

Q. Then when you had him perfectly sober after one of these trips he would start again his large consumption and work up to his outside limit?

A. You couldn't tell anything about him; he was awfully bad. We would get him sobered up and then in four hours he would get to drinking again.

Q. And in a day or two, after being fairly sober for a few days, he would start right back and consume or maintain his four-quart schedule?

A. Not the first day; it would take him a few days to get up to that; the more he drank the more he wanted.

Q. Did you ever drink with him, Captain?

A. I never drank with him. The first time I ever drank with him and the only time was when I was

chartering to him, and that the time I got notice, when his father told me that he came down there with him so he could get away from drinking up there, and I told him that would be my last drink with him.

Q. When you say he could go 30 days at a time drinking four quarts a day, do you realize that that is 30 gallons of liquor?

A. Yes, I do.

Q. And in addition to that would there be any beer?

A. No, sir, and very little to eat, too.

Q. There would be beer?

A. Very little to eat and no beer.

Q. Did he mix his liquor with wine and so forth?

A. No, sir.

Q. He wouldn't drink beer when he was drinking hard liquor?

A. No.

Q. You couldn't get him to mix the two?

620 A. No, sir.

Q. Would he mix gin and other liquors?

A. I never saw him.

Q. What kind of liquor did he drink mostly?

A. He usually drank gin; gin was his favorite drink when he could get it.

Q. And if he had gin he wouldn't drink anything else?

A. No, sir.

Q. Captain, do you remember over in Fort Meyers in October, 1936 when I, M. L. Mershon, and Mr. W. O. Merhtens, who sits here by me, and another gentleman whose name is Mr. Worth Monroe, were aboard the yacht, Friendship II, on the day that they had advertiesed her and were to sell her?

A. I remember you.

Q. Do you remember me asking to see the log of the Friendship II?

A. Yes, sir.

Q. What did you say and do?

A. Well, the Trustee I believe came to me—you didn't ask me—you asked Johnson Woolsler, who was the guardian or trustee of the boat at the time—but Johnson came and asked me could you have it. I don't know how you do get it, but you had that log book in the pilot house, as best I remember, and I told Johnson that that was my own personal property and that you or no one else should see that log book.

Q. And thereupon it was returned to you?

621 A. It was returned to me.

Q. Was that log book in the pilot house there that day, this book here?

A. That is the book you have in your hands.

Q. Did you make the statement at that time that that was not a part of the boat, that it didn't go with the boat, and that it was your own personal private record and that no one else could see it?

A. Only the Underwriters and the U. S. Marshal.

Q. You mean the insurance underwriters?

A. Yes, sir.

Q. Do you also remember on that same day, on the same occasion but a little earlier, that you came aboard the yacht Friendship II and found me and the other two gentlemen in the lower part of the boat, in the aft part, in the act of raising the hatches and looking at the exhaust pipes under the dining salon?

A. You didn't tell me what you were going to look at; you went in there and looked to me like you were "ram-shacking" the boat and I was the Captain of it.

Q. Was the engineer, Mr. Blount, also there?

A. He was down there when I came on the boat.

Q. Were you in uniform when we were making an inspection of the boat?

A. I was.

622 Q. Were you not informed that we were undertaking to make an examination of the exhaust pipes?

A. I was.

Q. Were you not informed that we were doing that with the permission of Mr. Johnson Woosler, the trustee in admiralty?

A. No, sir.

Q. Didn't you discuss the matter with Mr. Woosler?

A. Not at that time.

Q. Didn't you make a statement to Mr. Mershon, in the presence of Mr. Mehrtens and in the presence of Mr. Worth Monroe, that we couldn't make such an examination without your receiving orders from Mr. Woosler to do it?

A. Yes, sir.

Q. Had you been shown a letter which Mr. Mehrtens then had from Mr. Woosler authorizing him to come aboard and inspect the vessel?

A. Probably.

Q. You didn't pay any attention to such a letter if it was shown to you?

A. I would have had to at that time.

Q. What did you do then; did you go and call Mr. Woosler yourself over the telephone?

A. I went up there with this boy.

Q. With Mr. Mehrtens?

A. Yes, sir.

Q. And Mr. Mehrtens called Mr. Woosler in your presence?

A. Yes, sir.

623 Q. Did you talk to Mr. Woosler?

A. Yes.

Q. What did he tell you?

A. I don't remember just what he did say then.

Q. Didn't he say just hold everything and he would come down there in a few minutes?

A. Probably he did; I don't remember what he did say, but I know he came down there.

Q. But you stopped any examination under the hatches, didn't you?

A. Yes, sir.

Q. And before that examination could be completed or undertaken thereafter Mr. Woosler came aboard and held the sale to sell the boat, didn't he?

A. I believe he did.

Q. And thereupon the representative of the new purchaser and Mr. Woosler and yourself announced that the boat had changed hands and that we could not make any such examination?

A. I never said that; Mr. Woosler might have.

Q. Do you recall who the representative of the purchaser was; wasn't it Mr. John Stokes, Junior?

A. I believe it was.

Q. You said that Mr. Stokes was also the representative of the Yeiser estate at the time, didn't you?

A. No, I didn't understand that he was.

Q. Did you know that his firm, Loftin, Stokes
624 & Caulkins then represented the Yeiser estate?

A. No, sir.

Q. Had Mr. Coleman, or any member of that firm come over and notified you prior to that time that they were representing the Yeiser estate?

A. I talked to this gentleman here, Mr. Coleman.

Q. Did you know that he was a member of the firm of Loftin, Stokes & Caulkins?

A. Yes, sir.

Q. Attorneys at Miami?

A. Yes, sir.

Q. You knew that he represented the Yeiser estate?

A. Yes, sir.

Q. You also knew, did you not, that Mr. John Stokes, Junior, was a member of that firm and associated with him.

A. I didn't know that boy that day.

Q. I will show you a letter marked for identification "Claimants' Exhibit No. 12", and ask you if Mr. Mehrtens didn't show you that letter over on the yacht, Friendship II, that day?

A. I remember this letter, yes.

Q. You would not recognize that letter though until you talked to Mr. Woosler on the phone, would you?

A. No, sir.

Q. You never recognized this letter until Mr. Woosler had come aboard and began to make the sale of the boat?

A. I would not have recognized it then.

625 Q. As Captain of that boat you asserted your authority over it and prevented Mr. Merhtens, Mr. Mershon and Mr. Worth Monroe from inspecting the exhaust pipes in the bilge of that boat at that time, didn't you?

A. Not only you but three more parties that same day.

Q. Did any other parties tell you that day that they were looking for holes in the exhaust pipe and wanted to inspect that pipe for that purpose?

A. They wanted to come aboard there and inspect her, go through her.

Q. You were informed by Mr. Merhten's party that they were looking for leaks or the condition of the exhaust pipes?

A. I believe so, yes.

Q. And you said that they couldn't make such an examination?

A. When I went below I didn't know either one of you fellows and I had never seen you before, and I never had this letter then.

Q. But after the thing was explained to you, Captain, you still refused to permit that inspection to be made, didn't you?

A. Yes, sir.

Q. And you refused to permit that pipe to be seen, didn't you?

A. Yes, sir.

Q. Now in what capacity were you in command of that boat; that is, under whose orders and directions were you at that time before the boat was sold?

A. Mr. Johnson Woolsler.

626 Q. As trustee appointed by this Court?

A. Yes, sir.

Q. Now I will ask you if this letter which Mr. Mehrtens presented to you was not written on the stationery of Mr. Johnson Woolsler?

A. I don't know about his stationery, because I never seen any of it.

Q. Do you know his signature?

A. I would know it if I saw it.

Q. What did he tell you when you called him on the phone that day about that letter?

A. He told me that he would come down.

Q. Did he say he had written a letter to you?

A. I never asked him nothing; I believe this boy (Mr. Mehrtens) called him up first; I don't remember it at all, but he told me that he would come down to the boat.

Q. You took full responsibility, however, for preventing that inspection, didn't you?

A. Just as any other captain would do on a boat.

Q. Did Mr. Woolsler ever instruct you not to permit that inspection?

A. I had instructions from Mr. Woolsler to let no one on the boat.

Q. That was your general orders?

A. Yes, sir.

Q. And you declined and refused to obey this order from your employer, John K. Woolsler, which
627 letter said: "this will introduce to you Mr. W. O. Mehrtens, of the law firm of Evans, Mershon & Sawyer, Miami, Florida. This is the party about whom I spoke to you yesterday. Please allow him and his party admittance to the boat for inspection and also to take any

pictures of the boat." You refused to honor that letter when it was presented to you, didn't you?

A. Yes; have I got a right to tell you why I did?

Q. Yes. I am sure that your counsel will ask you that.

The Court:

What do you mean by his counsel?

Mr. Mershon:

That was a slip of the tongue, Your Honor.

Q. Now, Captain, you saw the Friendship II down in Miami for about 19 days before it started out on this trip on February 28th, 1938. As a matter of fact it had been in Miami a number of times since September, 1935, had it not?

A. Yes, sir.

Q. With Mr. Yeiser aboard?

A. Yes, sir.

Q. And he had been doing his periodical drinking, periodical heavy drinking during those visits?

A. Yes, sir.

Q. Do you know who called Dr. Spencer Howell to treat Mr. Yeiser?

A. Chief Blount.

Q. Do you know at whose direction he called
628 him?

A. At whose orders?

Q. Yes, at whose orders did Chief Blount call Dr. Howell?

A. My orders.

Q. Had you known Dr. Howell prior to that time?

A. Yes, sir.

Q. How long had you known Doctor Howell prior to the time you told Chief Blount to call him?

A. Well, probably six weeks or a month.

Q. Had you had an acquaintance with him of some kind, casual or otherwise?

A. No, sir, only he was on the boat as doctor for Mr. Yeiser.

Q. On previous occasions he had been on the boat?

A. Yes, sir.

Q. On how many previous occasions had he been aboard the Friendship II doctoring Mr. Yeiser?

A. About 14 days before this trip he came aboard; he came two or three times a day.

Q. I am sorry, but you have misunderstood my question. When he first came aboard 14 or 15 days before this trip—

A. I had a doctor by the name of Hudson and he recommended me to get this doctor, and as best I remember he sent him down to the boat.

Q. You didn't call him directly?

A. No, sir.

Q. How many times did Mr. Yeiser come ashore in Miami during the 10 to 15 days the Friendship
629 II was tied up at the Royal Palm Dock just before this trip of February 28th?

A. She wasn't tied up at the Royal Palm Dock; she was out—

Q. She never was tied up at the Royal Palm Dock at all on any of those occasions?

A. Only once or twice when we came in to get water.

Q. All right, with that correction can you answer the main part of my question.

A. About one time and that happened before this trip; that was Thursday before this trip.

Q. You mean only Thursday and no other time?

A. Yes, sir.

Q. And you say he was walking along unassisted, that he went ashore and came back?

A. He was walking just as straight at that time as anyone here can walk.

Q. How long had he been walking that way before he went ashore?

A. He was walking around there a couple or three days.

Q. On the boat?

A. Yes, he would get up in the morning and take his exercises and then he would probably go to bed and sleep the rest of the day.

Q. What kind of exercises?

A. Just walking around the rail; he laid on the boat so much that he had to get his legs straightened a little.

Q. What was the nature and the size of these two fishing boats you took along?

630 A. One of them was 36-feet long and the other one was about 26 or 28.

Q. The 26-foot boat was an open boat?

A. Yes, sir.

Q. And the 36-foot boat was a cabin cruiser?

A. Yes, sir.

Q. Were those boats towed when you went from Miami or did they run under their own power?

A. I started to tow them but we couldn't tow them.

Q. So they went under their own power all of the way?

A. I might have towed the little one.

Q. Chubby Mickle run at least one or the other of the boats all the way down to Card Sound?

A. The cruiser, yes.

Q. When you came back did you tow either of these fishing boats when you left Card Sound to come to Miami?

A. I tried to tow them, but I know that we run the big one.

Q. You are sure that Chubby Mickle ran the cruiser all the way from Card Sound to Featherbed Shoals and then on the second lap from Featherbed Shoals into Miami?

A. I am not sure about from Card Sound to Featherbed Shoals.

Q. What did you say?

A. I won't be sure.

Q. What about the other one?

A. He run the big cruiser.

Q. What?

631 A. He run the big cruiser from Card Sound.

Q. Was there any reason why he couldn't run the large one?

A. It was dark and the best I can remember is that he might have untied it and run it on to Featherbed, but the other boat had no towing line.

Q. When you docked at Card Sound how far was that from Angel Fish Creek?

A. About a mile and a half from where I was anchored; Card Sound runs along Angel Fish Creek.

Q. Is Card Sound on the outside of the reef or inside?

A. It is inside of the bay.

Q. How far from where you anchored was it to the mouth of Angel Fish Creek?

A. About a mile and a half.

Q. How far from Bower's Key?

A. About the same thing.

Q. In other words, there is a circle in there where you fish around the house-boat Friendship II?

A. No, we fished outside.

Q. You went outside and fished?

A. Where you anchored could generally be referred to as the mouth of Angel Fish Creek in the neighborhood of Pumpkin Key?

A. They call it Angel Fish Creek when you get down in that section.

632 Q. When you left at 5:30 P. M. on Friday afternoon, February 20, 1936, where did you leave from?

A. What?

Q. What port did you leave from when you went from Miami down there?

A. Royal Palm Dock.

Q. How long had you been tied up at the Royal Palm Dock?

A. We got there Thursday afternoon.

Q. You came in the dock Thursday afternoon?

A. Yes, sir.

Q. And that is where Mr. Yeiser went ashore?

A. Yes, sir.

Q. And you stayed there until Friday afternoon about 5:30?

A. Yes, sir.

Q. How far from Royal Palm Dock to where you anchored the first night near Featherbed Shoals?

A. About 18 miles.

Q. How far is it from that anchorage at Featherbed Shoals down to the neighborhood of Angel Fish Creek where you anchored?

A. I don't keep that in my mind; I can get it off of the chart; it would be 32 miles from here, the whole distance, but I never—

Q. Angel Fish Creek is just opposite the Key Largo Club?

A. Yes, sir.

Q. There was a great many fishing boats plying around there at that time?

A. Yes, sir.

633 Q. In other words, there was no particular anchorage?

A. No, sir; generally all of the captains have their own anchorage picked out there.

Q. On what day was it, Captain, that you fished with Mr. McKay and Mrs. Just was so sick; was that on Saturday or Sunday?

A. Sunday afternoon.

Q. Had you fished with Mrs. Just and Mr. McKay on Saturday?

A. No, sir.

Q. Who did they fish with on Saturday?

A. Chief Blount.

Q. Is that when you say they went bone fishing on Saturday?

A. Yes, sir.

Q. That Sunday what time did you take Mrs. Just and Mr. McKay out?

A. That was after lunch.

Q. Just in the afternoon?

A. Yes, sir.

Q. You don't remember the particular time?

A. No, I don't.

Q. And you say they fished for about an hour and a half?

A. That is about right.

Q. You observed that she looked seasick?

A. Yes, sir; she told me that she was seasick.

Q. She got that way while she was out fishing in that boat with you and Mr. McKay?

634 A. Yes.

Q. Did she vomit?

A. No, sir.

Q. How long were you away from the big boat, Friendship II, on that occasion when she and Mr. McKay were with you and she got seasick?

A. It would take me 20 to 25 minutes to run in from the reef, and it was still rough, and I came up to the mouth of Angel Fish to grunt-fish—

Q. Was she feeling better?

A. She was still laying down. We wanted to see if we could catch some grunts. Mr. McKay was catching them pretty good and she did get up after a while and fish a little bit. I don't remember how long it was that we were anchored out there.

Q. What was the color of her face?

A. The first time I noticed anything her lips had all turned purple and her face was kind of whitish.

Q. Her lips were purplish and her face kind of whitish?

A. Yes.

Q. By the time you got back to the big boat was she feeling better?

A. She was recovered a little bit but she didn't feel good.

Q. You got back before dinner-time?

A. Yes.

Q. She ate dinner with the rest of them?

635 A. Yes—I don't know. I didn't see her any more until that night.

Q. When did you next see her after you put her on the boat?

A. That was around ten o'clock that night.

Q. That was when she was in the deck salon playing cards?

A. Yes, sir.

Q. And did she look all right then?

A. She looked like she was feeling pretty good.

Q. Captain, you said that Mr. McKay slept in the port state-room. Did you see him sleeping in there?

A. Not on this special trip, no, sir.

Q. Did you see him in that port stateroom at all?

A. No, sir.

Q. All you saw was his baggage, is that right?

A. Yes, sir.

Q. What was the occasion for you seeing that?

A. Because there were only three beds made up—

Q. I asked you what was the occasion for you being down there.

A. I went down there to get these two ladies.

Q. That was the only time you were down there?

A. Yes, sir.

Q. And that was when you saw Mr. McKay's baggage in the port stateroom?

A. Yes.

Q. Was the window up in that port stateroom?

A. I never noticed.

636

Q. Was the door open in the port stateroom?

A. Yes.

Q. Was the door open into the starboard stateroom?

A. I don't think it was; I am sure it wasn't; that room was not being used that trip at all; it was closed and the bed was made up.

Q. I asked you, Captain, if when you looked into the port stateroom and saw the door open, if you looked to see whether the door was open to the starboard stateroom; did you look?

A. I am not sure.

Q. Do you remember whether the starboard stateroom door was open or shut?

A. I don't know.

Q. You do not remember that at all?

A. No.

Q. How many windows are there in the port stateroom?

A. One window in the port stateroom.

Q. How many windows in the starboard stateroom?

A. One.

Q. Is your memory as good about that as it is about seeing Mr. McKay's baggage in the port stateroom?

A. Yes.

Q. I will ask you to look at this sketch that you have identified and tell us how many windows it shows in the port and starboard staterooms?

A. Two.

637

Q. So your memory is not very good about either one of them?

A. No, sir.

Q. So, Captain, if you cannot remember how many windows were in the staterooms of a boat on which you were captain for a number of years, with occasion to examine her, and you admit that you do not remember that, is your memory of what you saw on the side there

while you were getting these ladies out of an emergency position, any better?

A. Yes, sir.

Q. How long were you in the double-cabin?

A. No longer than I could get the ladies out of there.

Q. Who picked them up out of their bunks?

A. I did.

Q. How or what part of them did you hold; did you hold the head, feet or the middle?

A. I picked the ladies up as best I could and carried them.

Q. At the small of their backs?

A. Yes.

Q. In a sitting-up position?

A. I picked them up that way, and Mr. McKay taken hold of their feet and the colored boy taken hold by the hands—

Q. Stand up and show us about the position you held them in bringing them out of that cabin?

A. How am I going to show you if you don't give me someone to—

638. Mr. Mershon:

How much do you weigh, Mr. Mehrtens?

Mr. Mehrtens:

About 138 pounds.

Mr. Mershon:

Now show us.

(Thereupon the witness demonstrated with Mr. Mehrtens the manner in which he claims to have picked up the claimants.)

(By Mr. Mershon):

Q. That was the way you carried them?

A. Yes.

Q. You were walking forward from the stateroom?

A. I had to walk sideways, this way (indicating).

Mr. Mershon:

Let the record show that the witness holds subject in prone position, suspended across the witness' chest, with subject's face looking downward.

Q. Had you seen Mr. McKay earlier in the morning before you went down into this aft cabin?

A. I don't remember.

Q. Had you seen Mr. Yeiser before that?

A. No, but I heard Mr. Yeiser.

Q. Where was he?

A. He was down below somewhere; I don't know where he was.

Q. You had not seen him?

A. No.

Q. Was Mr. McKay dressed when you saw him in the cabin?

A. Yes, sir.

Q. Did he have his clothes on? I mean his regular clothes.

A. I am sure he did.

Q. When you went down into this aft cabin where the ladies were who did you find there?

A. Mrs. Just and Miss Grunow.

Q. Was Mr. McKay there?

A. Yes.

Q. Was Mr. Yeiser there?

A. Yes.

Q. What was Mr. Yeiser doing?

A. He was sitting down.

Q. Where was he sitting?

A. On one of the beds, as best I can remember; I don't remember what bed it was.

Q. He was sitting on one of the beds?

A. Yes, on the side of it.

Q. Were there any chairs in there?

A. One little chair.

Q. You are sure he was sitting on the bed?

A. Yes, sir.

Q. Do you know which bed?

A. No.

Q. What did Mr. Yeiser say to you?

A. Mr. Yeiser told me those girls were under monoxide gas.

Q. What did he tell you to do with them?

A. He told me to take them up on the deck.

Q. Did he tell you to put Miss Grunow in his stateroom?

A. Yes, sir.

Q. It was under his orders that you did that?

640

A. Yes, sir.

Q. Which one did you take out first?

A. I believe I taken Miss Grunow out first.

Q. She was the one whose head hit something and she mumbled?

A. Yes, sir.

Q. Did Mr. Yeiser follow you up on to the upper deck after you took the young ladies out?

A. Yes, sir.

Q. Did he wait in the stateroom until you had moved them out?

A. Yes, sir.

Q. Were the windows in the stateroom at that time open or closed?

A. They were closed.

Q. They were closed?

A. Yes, sir.

Q. Was the door open or closed when you walked in there?

A. As best I remember it was closed.

Q. The door to the stateroom?

A. When I came from up on upper deck and went in there.

Q. And you found Mr. McKay and Mr. Yeiser in there?

A. Yes, they were there.

Q. Was Mr. Yeiser dressed in his regular deck costume?

A. Mr. Yeiser usually wore his pajamas pretty nearly all of the time on the boat and he had them on then.

Q. When this colored boy came for you did he tell you he had seen him? Did he tell you who had sent him?

A. Mr. Yeiser.

Q. What time of morning was that, Captain, that you were called and went below to this aft cabin and found the young ladies?

A. I never looked at my watch right then, but it was about an hour and fifteen minutes after I had taken up anchor and started. You might find that time on the log book, because the Chief taken the time.

Q. Was an accident of that sort such as one as should be timed?

A. No, sir.

Q. On the log book I mean?

A. No, sir.

Q. Do you recall what part of the shore you were opposite?

A. I was nearing Cape Florida but had not got off of it. You might remember, if you have been down there, that there is a big white beacon off to the middle of the bay out there—

Q. I think so.

A. I was coming near to that.

Q. About how far is that south of Royal Palm Dock?

A. I don't know off-hand. I would have to look at the chart. I never make guesses.

Mr. Mershon:

At this point I would like to inquire of counsel if he has completed his direct examination or whether you intend to inquire of him about the chart?

Mr. Parmer:

To tell you the truth, I had forgotten about the chart. I will do that later.

642 Mr. Mershon:

I wanted to examine on that at this time, but if counsel doesn't have it here—

Mr. Parmer:

I will try to get the chart by Monday. I do not have it here.

By Mr. Mershon:

Q. Captain, do you recall whether it was cold on that trip?

A. Well, it was pretty chilly that morning.

Q. Were the young ladies covered up; did they have blankets on them?

A. They had blankets on them.

Q. They did?

A. They had spreads over them; I know that they were covered up to here (indicating) when I saw them.

Q. If it was cold Mr. Yeiser probably had his bathrobe over his pajamas?

A. He usually wore his pajamas and his bathrobe, yes.

Q. Now you said you talked to Mr. McKay after you brought the ladies out on deck and before you anchored

at the Royal Palm Dock, and I believe you said Mr. McKay told you to say nothing about it and to inform all of the crew?

A. Yes, sir.

Q. Was Mr. Yeiser present when Mr. McKay told you that?

A. No, sir.

Q. Did Mr. Yeiser confirm that order to you?

A. Mr. McKay did.

Q. Did you take orders from Mr. McKay on
643 that boat?

A. I did at that present time because I thought a lot of him, and I just figured that he didn't want the crew or anybody to know that they were sick or anything had happened to them. I didn't know what it was all about.

Q. In other words, you did not attach any special significance to the request, did you?

A. No, sir. If he asked me to do on the boat it was always done, and Mr. Yeiser gave me orders to please him.

Q. It is the duty of a discreet captain on any private yacht not to give forth to the public anything that happens aboard his ship?

A. Yes.

Q. And you would have done the same thing if Mr. McKay had not made any request?

A. The first thing I would have tried to do was to get the girls to the hospital if I hadn't had these orders.

Q. The first thing you did was to call a doctor?

A. Yes.

Q. Mr. McKay did not tell you not to call a doctor, did he?

A. No, sir.

Q. Would you have discussed that matter or allowed your crew to discuss it even if Mr. McKay had not asked you not to?

A. Of course not.

Q. What he asked you wasn't anything out of the ordinary at all, was it?

A. I didn't take it that way.

644 Q. Where was Mr. Yeiser at the time that you were talking to Mr. McKay?

A. I don't know.

Q. He was up on deck somewhere?

A. I don't know where he was at; I couldn't say where he was at; I don't know where he was.

Q. Where were you when you had this little conversation with Mr. McKay?

A. In the pilot-house.

Q. He was up in the pilot-house with you?

A. Yes, sir.

Q. Could you be mistaken in your recollection that Mrs. Just left the Friendship II about eleven o'clock in the morning; are you positive about that?

A. That she left there at what time?

Q. Eleven o'clock in the morning.

A. In the afternoon.

Q. Mrs. Just I am talking about.

A. Excuse me, I could be exact just what time it was but we got her off as quick as possible.

Q. You didn't mean to be positive about it when you said it was eleven o'clock, did you? In other words, that is your best recollection?

A. Yes, I figured that would be about right.

Q. You said that you were very busy after you got to port?

645 A. Yes.

Q. What were you doing?

A. Tying up my boat and the two small cruisers.

Q. How long did that take?

A. Probably took 30 or 40 minutes and getting hold of the Chief and getting hold of Chubby and telling them not to mention anything about these girls being sick.

Q. Had you given orders to Chief Blount to get Mr. Roderick down there to look at the boat and make an estimate?

A. Not that quick.

Q. Where did you find Chubby?

A. On the deck; he came up on the other side of the second-deck.

Q. Now when that day did you tell Chief Blount to have Mr. Roderick come aboard?

A. I didn't tell him until way that late; I don't know what time it was, but we had him.

Q. You did that in pursuance of Mr. Yeiser's orders, did you?

A. Yes, sir.

Q. Had Mr. Yeiser on other occasions discussed with you changing the pipes so as to make them run up through the stack?

A. Yes, sir; that was his intention of doing it.

Q. How long had he had that intention as reflected in his discussions with you?

A. I don't know just exactly when he did tell me about it.

Q. As well as you recall. You know something about; just tell us the best you know?

A. Well, I know it was somewheres around
646 September that the boys got knocked out that time.

Q. September, 1935?

A. Yes.

Q. Was it about the time these two children were affected by gas on that boat?

A. I think it was.

Q. And he had delayed from that time until March 2, 1936, without doing anything definite about it?

A. Yes, sir. His intention was to lay up in the summer and put it in.

Q. Where was the Friendship II when you picked Mr. Yeiser's own little son up off the dining-room floor on this yacht when he was overcome by gas?

A. On the West Coast.

Q. Were you on a trip?

A. Yes, sir.

Q. Where were you going from the West Coast?

A. Down in the Shark River country.

Q. Was it daylight or dark?

A. It was daylight.

Q. Where was the other little boy—not the one you picked up off of the floor but the other one?

A. I don't know where he was at.

Q. Was he lying in one of the bunks in this big room?

A. I don't remember; I was called up there by this little fellow—after a while they told me that this
647 / fellow, this boy, came out there sick. I went back aft afterwards and found the two of them back there sick.

Q. It was then that Mr. Yeiser discussed running the exhaust pipes up through the stack?

A. He started talking about it.

Q. Was it at that time that he had you see Loftin of Loftin's Boatyard and get the estimate on changing those exhaust pipes?

A. No, sir.

Q. Did you ever get an estimate from Loftin on the cost of replacing the exhaust pipes or changing the exhaust pipes in the Friendship II?

A. It seems to me like we did but I don't remember when it was.

Q. What was the occasion of getting such an estimate from Mr. Loftin?

A. When this question was brought up it was I believe after Mr. Yeiser's death that Mr. Loftin tested these pipes and was going to give an estimate; I don't remember that he ever gave the estimate.

Q. Do you say positively that you did not consult with Loftin of Loftin's Boatyard and ask that they estimate on the cost of installing new exhaust pipes or changing the exhaust pipes until after Mr. Yeiser's death?

A. I don't remember whether it was before or after.

Q. You don't remember whether it was before or after?

A. No, sir. I would have to date the date on
648 that; that has been a long time ago.

Q. At whose request did you procure that estimate from Loftin's Boatyard?

A. What?

Q. Who ordered you to get that estimate from Loftin's Boatyard?

A. I guess it was through the estate.

Q. Didn't Mr. Yeiser ask you to get the estimate?

A. I am not sure who it was; I got my orders from three or four. I could look up and probably find out.

Q. You say you got orders or estimates?

A. Orders. I had about three bosses you know.

Q. You always had to have Mr. Yeiser join in with the others, didn't you?

A. Sometimes.

Q. Who was accustomed to give orders to you to do these things, such as getting estimates for major repairs on the boat?

A. He did part of the time, and I probably got some from Mr. Balsh and Miss Alma Chambers.

Q. They were also as familiar with the condition of the boat as he was?

A. No; they were not as familiar with the boat as he was.

Q. So who to the best of your recollection ordered you to get an estimate from Loftin's Boatyard for repairing the exhaust pipes or replacing them?

A. I don't remember just who it was.

Q. But someone did; you are sure of that?

649 A. Yes, I am sure that there was an order; I don't know whether it was after his death or not; it might have been.

Q. You would not have done that without an order from somebody over you, would you?

A. Sure not.

Q. Who controlled and supervised the movements of the Friendship II while you were captain of her when Mr. Yeiser was aboard?

A. Mr. Yeiser.

Q. How did this little boy of Mr. Yeiser's act when you picked him up off the floor in the dining-room?

A. He acted like a seasick person to me; it was very rough. I just don't know.

Q. Did you stand him on his feet?

A. No; I took him up and laid him down on the back deck.

Q. Did he vomit?

A. I don't remember.

Q. You didn't stay back there with him?

A. No.

Q. Who stayed there with him?

A. Mr. Yeiser; I remember him covering him up at the time.

Q. Did you see the other little boy come out?

A. No, I didn't see him come out, but he was there for a while; I went back there in a few minutes.

Q. Was this little boy that you picked up unconscious?

A. No, sir.

Q. What did he say?

650 A. He didn't say anything; the little fellow didn't talk much. I believe the first thing he said was that he had a terrible headache; that is what he told his father.

Q. Did he undertake to stand up?

A. Not then; he laid down and slept a little while, and it was not long until he was running around on the deck

that afternoon. I don't believe he ate a very big dinner that night but the next day he was all right.

Q. Have you ever seen any one seasick on deck and trying to walk?

A. Yes, sir.

Q. Did they walk in a nice straight line?

A. They didn't walk so good.

Q. If you saw them from behind and didn't know they were seasick, would you think—

A. In rough weather I would say he was drunk.

Q. What is the difference at a distance from a man who is seasick walking along a sidewalk and a man who is partly drunk walking along a sidewalk?

A. I don't know; you don't get seasick on the sidewalk.

Q. Can you tell us the difference, if any, between the movements of a man that is seasick and the movements of a person who is apparently under the influence of alcohol?

A. I never noticed them that close.

Q. You are not a specialist in either one?

651- A. No, but I can tell when a fellow is drunk or seasick.

Q. Do they look somewhat alike in their movements to you?

A. No.

Q. What is the difference in them?

A. Well, the fellow that is drinking has a lot more to say than the fellow who is plumb seasick.

Q. Well, when they are partly sick and partly drunk—

A. The man who is seasick doesn't have much to say to anybody, and he would rather be left alone, but the one who is drinking you can always notice that he wants to talk to everybody.

Q. You are talking about the way they feel. I am talking about the way they walk.

A. I am talking about the way they looked and the way they always talked to me. That is the only way I know how to answer you.

Q. I believe you said the exhaust pipes on the Friendship II during this period of time that you were captain on her would throw fumes up over the boat, that the fumes would come up from the stern when conditions were right?

A. Yes.

Q. What do you mean by conditions being right?

A. Well, it would take a side wind or a stern wind.

Q. You mean if the wind came from the same direction in which the boat was going, the fumes would come up from the stern of the boat?

652 A. It wasn't so bad, but if you got a good head wind you would get some back on the stern there.

Q. Then conditions were right all of the time for gas to come on the boat?

A. It was worse at times.

Q. What do you mean by "when conditions are right"?

A. To make anyone sick. The only time I ever noticed it would be when the wind was plentiful—

Q. Do you want to change your testimony or your statement that the gas would come over the stern because of a head-wind?

A. There wasn't much, but there would be some.

Q. Would there be any in your bunk in your stateroom when you were running against a head wind?

A. I don't know; if so, I don't remember it; I was running so much at night that—

Q. When you were running into a head wind and when the back windows of this stateroom, double stateroom, were closed, you would not get any fumes from the exhaust pipes in that aft stateroom?

A. I never did go down there to examine it but possibly you could.

Q. Did you report that to Mr. Yeiser?

A. I never reported it at all, but he knew that as well as I did.

Q. He knew that you got fumes in that stateroom under certain conditions?

653 A. He knew about it and he always told people to keep those windows closed. He was worried about that.

Q. What was he worried about?

A. One morning he went down there and he called these girls—I have an idea that is what he went down there for—and probably they were sleeping, and he was the one that closed the windows probably.

Q. When was that?

A. That was this same trip.

Q. Which morning?

A. Monday morning.

Q. Monday morning?

A. Yes, sir.

Q. Do you know which direction the wind was coming from on the night of Sunday, March 1st, from the time you left Angel Fish Creek until you anchored at Feather-bed Shoals?

A. Coming back to Miami that night?

Q. Yes.

A. As best I remember it was just a northeast wind.

Q. What was your general course?

A. That night?

Q. Yes, the first night coming back to Miami?

A. I don't get that.

Q. Was it about a northeast course?

A. You might say so.

Q. Is that right?

A. Probably.

654 Q. And you were running directly into a head wind?

A. Yes, sir.

Q. Therefore there would be no fumes from the exhaust pipe going into the staterooms from the back windows under those conditions?

A. No, sir.

Q. Now on Monday morning what would your course be from Featherbed Shoals up to the Cape Florida light about where you first discovered these ladies in their bunks unconscious?

A. Well, to tell you the truth if I was going to take that trip now I would get my chart out and I would get my course in that manner.

Q. Yet you are a Master pilot?

A. Yes, but a Master pilot doesn't run by guesses. We don't try to remember these things. We do our work every day and we take our course every day.

Q. You do it anew every time and you do not try to remember anything—

A. That's right.

Q. Captain, do you mean to say that you do not know what direction you would lay your course in coming from Featherbed Shoals up to the point where you got off Cape Florida Light where these ladies were found in their bunks?

A. Do you mean the ordinary general course?

Q. Yes.

655 A. North.

Q. Do you know from what direction on the morning of March 2nd, Monday morning, the wind was coming?

A. I couldn't give you just the exact point that the wind was at that particular time that morning, but it was blowing right against the stern, right across the stern.

Q. Would a certified copy of the Weather Bureau's chart for that day refresh your memory?

A. Probably would.

Q. Now just to refresh your memory I show you a paper and will ask you to examine it and see if it refreshes your memory as to the direction of the wind between the hours of seven o'clock A. M. and nine o'clock A. M. on Monday, March 2, 1936.

A. I couldn't tell you just where the wind was.

Q. You say that after examining that chart?

A. Yes. She was on the side of the boat; I was coming north. Now the wind was about northwest, or somewhere in there.

Q. That is your best recollection?

A. Maybe further to the west than to the north.

Q. Were conditions right in your opinion for the gas fumes to come into the bedroom, over the stern of the boat into that stateroom?

A. She could have taken gas there just as good as any other times.

656 The Court:
Is that all?

Mr. Mershon:
At this time, your Honor.

The Court:
We will take an adjournment now until 7:30.

657 Miami, Florida, October 13, 1937, 10:00 A. M.

The Court:
All right, gentlemen, we will proceed now.

Mr. Parmer:
Your Honor, I have a memorandum which I would like to give you at this time.

Mr. Mershon:
If your Honor please, we have a memorandum upon the same question..

The Court:
Have you seen a copy of this?

Mr. Mershon:

Mr. Parmer has just handed us a copy, but over the week-end he was good enough to give us the citations, and we have prepared a memorandum which will be over here after lunch, at which time we will give Mr. Parmer a copy.

The Court:
All right.

Mr. Mershon:

I would like to have Captain Roberts take the stand.

Thereupon, CAPTAIN FREDERICK ROBERTS resumed the stand and testified further as follows:

Re-Cross Examination.

By Mr. Mershon:

Q. Captain Roberts, you testified on direct examination, did you not, that you burned the so-called log of the Friendship II which you were causing to be kept on or about January 1, 1936?

A. No, I didn't say I burned it; I said I burned all of my bills. After we got this new log-book I don't know what became of the other one, because it wasn't
658 any more use to us.

Q. What was the purpose of keeping the log-book as you kept it prior to January 1, 1936?

A. Well, if we knocked a propeller blade off or if we had any kind of an accident, we would have to tell the exact spot where it happened.

Q. Did the insurance carriers require that you keep such a record?

A. Yes.

Q. Did they insist upon their right to examine your record from time to time?

A. Whenever there was an accident.

Q. When you would make a claim?

A. Yes.

Q. Now what period of time did that log, which is now missing, cover?

A. It only covered any time there was an accident.

Q. My question may not have been clear. The log that you now identify and which is in Court at this time covered a period from January 1st on up to the time you severed your connection with the boat. Now, Caption Roberts, what period of time ending with January 1, 1936, did the log cover, that is, the log which you say was lost or that you cannot find?

A. I don't know exactly how much it covered.

Q. Did you ever have another log-book similar to the one which is in evidence, other than this one which is in evidence and the one which you say was lost, as a log-book for the Friendship II?

659 A. No, sir.

Q. So from the time Mr. Yeiser acquired the Friendship II you did keep a similar log-book to the one that is in evidence?

A. Yes.

Q. Which covered the movements of the boat up to January 1, 1936?

A. Yes, sir.

Q. Now when was the last time that you individually and personally saw or knew anything about the previous log-book ending January 1, 1936?

A. Sometime in December we were over here at the Flamingo Dock and the Chief said he was going to get another log-book. I told him it was all right to get another one or start any other one that he wanted to.

Q. After you severed your connection with that boat and the Yeiser estate, was there any reason for keeping this log book?

A. I was going to use it on my small sailboat. I believe I started in it with the boat I have now. I believe you will see my signature there. You can see it; it is very hard reading, because it is poor writing, and I don't know whether you can read it or not.

Q. Did the other log-book have entries in it right to its back pages, the one that was lost?

A. I suppose it was just like that one that you see right there.

Q. No. I am asking you whether the other log-book was full of entries right to its back pages, the one that was lost?

A. Sometimes the Chief would probably want
660 to use a page for something else, and we didn't have to carry the book that way. To tell you the truth, I never noticed it closely; it was only carried for any trip we might have made; in other words, if we had an accident then we could use it.

Q. You said the log-book which was lost was your personal property?

A. It was all my personal property, yes.

Q. You made no effort then to keep Chief Blount from throwing it away or doing whatever he wanted to do with it?

A. I didn't need that book any more.

Q. Did you authorize him to destroy it?

A. I don't know what he did with it.

Q. Did you give him authority to throw it away or do whatever he wanted to do with it?

A. No, sir.

Q. Why would he throw your personal property away without your knowledge or consent?

A. He "knowed" I was through with it.

Q. Yet you did not tell him you were through with it, did you?

A. No.

Q. Do you remember the occasion in October of this year when you testified that you refused to allow Mr. Mershon and Mr. Mehrtens, the attorneys for Mrs. Just and Miss Grunow, who were aboard the Friendship II at Fort Myers, to see the log-book?

A. Yes, sir.

661 Q. Now what book was that that you refused to let them see?

A. It is the book I had here in my hands the other day.

Q. You didn't then have the log-book?

A. No, sir.

Q. Did the old log-book contain any entries or any reference to the time when Mr. Yeiser's two little boys suffered from the effects of carbon monoxide gas on that boat?

A. The Chief could tell you.

Q. You never made any such entries?

A. No.

Q. Where was the log-book kept; I mean at what spot on the boat?

A. In the engine room.

Q. It was not kept in the pilot-house?

A. No, sir.

Q. It wasn't kept in the Captain's cabin or the wheel-house?

A. No, sir.

Q. That morning when Mr. Mershon and his party were on the boat, however, this log was in the wheel-house or in the Captain's cabin, wasn't it?

A. Yes, sir.

Q. Did you make a practice of examining that log or checking up on it to see if it was accurate in its recitals?

A. No, sir.

Q. I believe you said that about January 1, 1936, you burned a lot of bills that you had for that boat?

A. Yes, sir.

662 Q. Did you clean house then of all records
you had concerning the boat about January 1,
1936?

A. Yes, sir.

Q. Now, Captain, what repairs of a substantial nature
were made upon the Friendship II at Fort Myers at
Loftin's Boat Yard shortly after Mr. Yeiser bought the
Friendship II?

A. I would have to get all of my bills to show you
that; I don't remember.

Q. You don't have the bills, do you?

A. No, sir.

Q. And you have absolutely no recollection of this boat
being in Loftin's Boat Yard?

A. Yes, sir.

Q. Did they replace planking at the stern of the Friend-
ship II?

A. Yes.

Q. How much planking did you have to replace there
on the stern of the Friendship II?

A. There was about six little planks about that wide
(indicating), I guess, and about that long, (indicating);
I don't know the footage of it.

Q. Did you lay her in dry-dock to do that?

A. Yes, sir.

Q. Indicate on this blue-print, Petitioner's Exhibit No.
3, about where the planking was replaced on the bottom
of the boat at that time; use the outline at the bottom
of the page rather than this here (indicating).

663 A. Right here (indicating).

Q. Did the propellers project beyond the stern
of the boat?

A. No, sir.

Q. The propellers are somewhere near the aft part of
the after stateroom?

A. Yes.

Q. How many feet do you say in length, measuring from the forward to the aft part of the boat, was replaced?

A. I am no carpenter, but my judgment is that it was probably three feet, right over the wheel there.

Q. Why was this planking replaced?

A. Well, we had some iron ballast on there.

Q. Ballast?

A. Yes.

Q. What was the size of that ballast?

A. It was just small window weights and little pig-iron.

Q. How long did she lay in dry dock at Loftin's Boat Yard on that occasion?

A. The boat was up there about eight days to the best of my memory.

Q. What other repairs, painting or other work, was made on the boat at that time?

A. Painting throughout.

Q. Was the boat stripped for painting?

A. No, sir.

Q. Was the furniture removed?

664 A. No, sir.

Q. Were the hatches raised up?

A. No, sir.

Q. The hatches were not removed on the lower deck?

A. No, sir.

Q. Was she painted inside the bilge?

A. No, sir; just aft.

Q. Sir?

A. In the after stateroom.

Q. So these hatches were raised?

A. Yes, these hatches were raised in the after stateroom.

Q. What, if anything, did Loftin's do in the way of work on the engines?

A. Loftin's?

Q. Yes.

A. They didn't work on the engines.

Q. Wasn't it at that time that you asked Loftin's to give Mr. Yeiser an estimate on the cost of replacing these exhaust pipes?

A. No, sir, not that I remember.

Q. You say it was not?

A. Not that I remember.

Q. Do you remember ever asking Loftin's Boat Yard for an estimate on replacing the exhaust pipes?

A. Yes.

Q. When was that?

A. That was after Mr. Yeiser's death.

665 Q. Not until after Mr. Yeiser's death?

A. No, sir.

Q. How much time did you spend around and in the Friendship II while she was in dry dock at Loftin's Boat Yard?

A. Every day she was on the dry dock.

Q. Who authorized you to get the estimate from Loftin's for replacing the exhaust pipes after Yeiser's death?

A. I don't remember who authorized it.

Q. Do you say, Captain, positively that you never discussed with Mr. Loftin, of Loftin's Boat Yard, the matter of replacing the exhaust pipes on the Friendship II until after Mr. Yeiser's death?

A. Yes, sir.

Q. Did you say that after Yeiser's sons were overcome by this gas in September, 1935, that Mr. Yeiser then stated he wanted the exhaust pipes run out through the stack?

Mr. Parmer:

I think that question is confusing, because it is predicated upon a statement after Mr. Yeiser's death.

The Court:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:

You were asked if you testified in your former testimony that after the boys were overcome or affected by this carbon monoxide gas in September, 1935; whether or not you said at that time that Mr. Yeiser wanted to replace these exhaust pipes by putting them
666 overhead.

The Witness:

That was his intention.

The Court:

Now when you answered it was in 1935 you gave the time. Now the question was did you say that?

The Witness:

Yes, sir.

(By Mr. Mershon):

Q. Did Mr. Yeiser express that desire and intention to you in September, 1935?

A. Yes, sir.

Q. Did Mr. Yeiser then instruct you to get estimates from the various people as to the cost of doing that?

A. Not at that time.

Q. Did he make any effort through you or otherwise as far as you know, to have anything done about changing or replacing the exhaust pipes between the time his boys were overcome and the time these young ladies were found ill on the boat on March 2, 1936?

A. No, sir; all he said was that he was going to do it; his intention was to take them out and fix them in the summer when we were laid up.

Q. He procured no estimates and made no efforts to do anything about it prior to March 2, 1936, is that right?

A. Not until after all of this trouble came up. We got the estimates right at the dock down here from some party—I don't know who it was—to put the exhaust up through the stack.

Q. These estimates that were gotten from Roderick were gotten on March 2, 1936, while Mr. Yeiser was still alive?

667 A. Yes.

Q. And they were gotten then at his direction, were they not?

A. Yes, sir.

Q. I believe you stated that he told you that those exhaust pipes must come out and be changed through the stack?

A. Yes.

Mr. Mershon:

That is all.

Re-Direct Examination.

By Mr. Parmer:

Q. Captain, when Mr. Yeiser's family came on board the boat during the Christmas holidays of 1936, who was in the family party at that time?

A. Mrs. Yeiser, her two boys and the nurse.

Q. How long were they on the boat?

A. Two weeks.

Q. Now, Captain, will you tell us all of the circumstances as you know them with regard to your refusal to allow Mr. Mershon and Mr. Mehrtens to make an inspection of the Friendship II in October of 1936, or whenever it was. Will you please tell us that in your own way?

A. I did not happen to be on the boat at the time these gentlemen came down to the boat, but I was to have

the boat ready at 1:00 o'clock for the sale or auction, or whatever it was, and when I came down these gentlemen had the whole floor on the boat turned up, going through it; they looked to me like they were racketeers; that's what

I thought; and then they ran over to me with
 668 a letter. I didn't know anything about the letter, and I told them that the boat could not be torn up that way, and that they couldn't do it.

Q. What time was that?

A. Around 12:00 o'clock.

Q. When was the sale going to take place?

A. At 1:00 o'clock.

Q. Now had you received any word on the previous day from Mr. Woolsler with regard to Mr. Mershon and Mr. Mehrtens coming aboard the boat?

A. The day before.

Q. Had you received word from him that someone was coming there to inspect the boat?

A. Some lawyers from Miami.

Q. What instructions did he give you?

A. He told me he would let me know when they came.

Q. Did he let you know when they came?

A. No, sir.

Q. What general instructions did you have with regard to preparing the boat for the auction?

A. To have her in nice shape, in as nice a shape as I could get her in.

Q. Prior to Mr. Mershon and Mr. Mehrtens coming on the boat had you done anything to put the boat in nice shape?

A. I had, and the rugs were all laid—

Q. What was the reason for your refusing to allow
 669 Mr. Mershon and Mr. Mehrtens to examine the boat?

A. Because I wouldn't have time to get the floor put back by 1:00 o'clock and have the boat ready when they came down, and Mr. Woolsler gave me orders to let no one tear the boat up at that time.

Q. Did you, following your conference with Mr. Mehrtens and Mr. Mershon, speak to Mr. Woolsler?

A. I went up with this little fellow right here (indicating Mr. Mehrtens).

Q. You mean Mr. Mehrtens, the smaller gentleman?

A. Yes.

Q. All right.

A. I went up to phone Mr. Woolsler and Mr. Woolsler told him he would be down, as I remember it.

Q. How long after that did the auction take place?

A. It started somewhere around 1:00 o'clock; it was set for one o'clock.

Mr. Parmer:

By mistake, we neglected to bring certain charts, so we will have to send to the office for them.

The Court:

All right.

Mr. Parmer:

There are certain matters concerning them I wish to recall the witness on.

Mr. Mershon:

May I cross examine the witness further?

Mr. Parmer:

Yes.

By Mr. Mershon:

Q. At the time that you refused to let Mr. Mershon and Mr. Mehrtens and Mr. Worth Monroe look
670 at the exhaust pipes on the boat, couldn't you have simply allowed them to lift the hatches up and look at the exhaust pipes and put the hatches back?

A. Well, I would have had to take the rugs up; you know, the rugs were all down.

Q. There were no rugs in the bathroom.

A. Yes, there were rugs in the bathroom.

Q. On that day?

A. No, there were no rugs in the bathroom; that is a tile floor.

Q. You wouldn't even allow them to put their finger in the hole in the little hatch in the bathroom and raise it up.

A. They didn't ask me to.

Q. You told them that they couldn't go through the boat and look at it?

A. Yes.

Q. You knew at that time that the patches were on those exhaust pipes and that an inspection would show that they were there?

A. Yes.

Q. You knew then that despite the letter to you from Mr. Woolser, the Trustee, that you were preventing Mr. Mershon and Mr. Mehrtens and Mr. Monroe from seeing these patches as they then existed on the exhaust pipes?

A. No, sir.

Q. You didn't know that the effect of your action would prevent them from seeing those exhaust pipes and finding the holes in them?

671 A. No, sir.

Q. You didn't know that?

A. No, sir.

Q. Your only purpose in preventing them from examining these exhaust pipes and finding out their condition was that you had put the ship in shape for the coming sale?

A. Yes, sir.

Q. When you say the bathroom has a tile floor, do you mean a linoleum?

A. Yes, linoleum tile.

Q. And the hatch in the bathrcom was also covered with linoleum tile?

A. Yes.

Q. It would be a simple operation to raise that little hatch up and look down in the bilge?

A. You didn't ask me that.

Q. I am asking you now if it would not have been a simple operation there?

A. If you wanted to look through the boat?

Q. Yes.

A. Why, the hatches would all have to be taken up.

Q. I am asking you now if in a half-minute's time or less you couldn't raise the hatches in the bathroom without removing any rugs, and at least to that extent have exhibited to us a part of the exhaust pipes?

A. That wasn't explained to me.

672

Re-Direct Examination.

By Mr. Parmer:

Q. When you got there what did you observe with respect to changes which had been made in the vessel since you had last been on it?

A. I observed that the rugs in the hallway had been rolled up and the hatches were being removed.

Q. How many hatches were being removed?

A. I never noticed how many it was. I didn't want any removed.

Q. Well now had you been informed on the day before as to what time to expect Mr. Mershon and Mr. Mehrkens?

A. They were to be there that morning, but they didn't stay any time.

Q. You saw them that morning?

A. Yes.

Q. What time of the day did they arrive?

A. They were around the boat about 12:00 o'clock.

Q. Twelve o'clock?

A. Yes.

The Court:

Who told you that they would be there that morning?

The Witness:

Mr. Woolsler.

The Court:

You said something about a telephone conversation with Mr. Woolsler. I am trying to get that straight in my mind. Did you testify that Mr. Mehrtens called up Mr. Woolsler?

673 The Witness:

Yes.

The Court:

Do you know that?

The Witness:

Yes.

The Court:

How do you know that?

The Witness:

I was standing right there with him.

By Mr. Mershon:

Q. After you had refused to allow us through the boat in pursuance of Mr. Woolsler's letter, did Mr. Mehrtens go with you to a telephone and talk to Mr. Woolsler in your presence?

A. Yes, sir.

Q. And Mr. Woolsler talked to you for sometime?

A. Yes.

Q. Over the telephone?

A. Yes.

Q. Had you heard earlier in the day from Mr. Woolser?

A. No.

Q. You had not talked with him earlier that day?

A. Not that I remember of.

By Mr. Parmer:

Q. Captain, were you present in August of 1936 when the test was made on the pipes on the Friendship II?

A. Yes.

Q. When Mr. Coleman and the chemist were there?

A. Yes, sir.

Q. Well now did you make any of the preparations which were made for the tests which were made?

674 A. Only to help close the window.

Q. What did you do with regard to the windows on the boat?

A. Well, that morning I opened the boat all up and aired her out. Mr. Coleman came down before we made the tests and he asked me to see that all of the windows were closed.

Q. Did you do that?

A. Yes.

Q. Did you close some of them yourself?

A. Yes.

Q. Who closed the rest of them?

A. The Chief helped.

Mr. Parmer:

Now, the only other matter I have is the one which I believe I mentioned before, that is, the chart.

Mr. Mershon:

You can prove that any time.

By Mr. Mershon:

Q. Captain Roberts, what time of the day was this test started in August, 1936?

A. I didn't take the time.

Q. Were you there?

A. Yes, sir.

Q. How long had it been since the Friendship II had been run or operated prior to the making of the tests?

A. I don't know what you mean, but we run those engines once a week very nearly all day long. The Chief would be on the boat and he would go down and start them and run them and operate them steady.

Q. How long had it been since the engines had been operated by Chief Blount before you made this test?

A. It could not have been over five or six days at that time.

Q. Do you think it was at least five or six days?

A. Yes.

Q. You said you first opened all of the windows, opened the windows up.

A. I did that every day.

Q. Did that include raising the hatches?

A. No, sir.

Q. How long had it been since you had raised the hatches?

A. I kept those hatches open.

Q. You kept those open all of the time?

A. Yes.

(Witness excused.)

been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Farmer:

Q. Mr. Coleman, in August of 1936 did you go to Fort Myers for the purpose of making a test with regard to the exhaust pipes on the Friendship II?

A. I did.

Q. Will you tell us what you did in that connection?

A. I got to Fort Myers sometime in the forenoon and I met Mr. Walker there. I had made arrangements to meet Mr. Walker there, and we went down to the boat, and he had the windows on the boat closed. He had the engineer start the motors up and get them working smoothly, and after waiting for some little time, fifteen or twenty minutes, we then began the tests that Mr. Walker has already testified about. First we began the test in the after-stateroom, closed the door and windows and all of the doors inside, the closet door, and closed the outer door very tightly, and had this small flexible rubber hose which ran from the hallway into the interior of the room, and the engines then were running as instructed. I had instructed Engineer Blount to make the same rate of speed he was making at the time of this accident.

Q. Mr. Coleman, before you go further I want you to examine Petitioner's Exhibit No. 3 and refer to
677 the after-cabin as shown there, and will you tell us what doors and windows of the interior of that cabin you closed?

A. We closed the door to the hallway, and we closed all of the windows in the cabin and we closed the closet doors.

Q. What about the bathroom doors?

A. And we closed the bathroom door.

Q. Now, what was the purpose of closing all of the windows on the boat?

A. The purpose of it was to get as great a degree of concentration as possible; in other words, I wanted the test to be made under conditions that might be more than unfavorable to us, because what I was trying to do was to get a test as near as I could that would indicate the concentration of the gas in the room.

Q. You mean the maximum concentration?

A. Yes.

Q. What was the idea of closing the closet doors and the bathroom door inside the room?

A. I don't know of any particular reason now that I had in mind for closing them. I don't remember just what my reason was.

Q. Will you continue on from there with regard to the test or tests?

A. Then we continued the running of the motors for a period of two hours and twenty minutes.

Q. For what reason did you run them for two hours and twenty minutes?

678 A. That was, as I understood it, the elapsed time of the trip, from the time the Friendship II had left its mooring, that is, where it was anchored, to the time that it docked in Miami.

Q. Where did you get that information?

A. I got that information from previous conversations that I had with Captain Roberts and the engineer.

Q. Now at the end of that two hours and twenty minutes what did you do?

A. Then Mr. Walker got the end of the pipe that had protruded out in the hallway and sucked out the air that was there in the end of the small pipe and the interior of the after-stateroom, and put that in his bottle and he was going to use it for the purpose of his test after he got back to Tampa.

Q. After he did that did anybody go in the room?

A. Yes, after that of course we opened the door and we both went in the room.

Q. You know that you did go in the room?

A. Yes.

Q. When you got in the room did you smell or see anything?

A. Yes.

Q. What?

A. I saw a grayish smoke similar to that that you see in a garage after the exhaust of an automobile had been running for sometime.

Q. Did you smell anything?

A. Yes, it was some kind of an odor, the same kind of an odor that you smell in a garage from an
679 exhaust pipe.

Q. Did you make any other tests?

A. After that we made this test that the Chief testified about, that is, putting the hose underneath the exhaust pipe and running it into the bottle.

Q. What was the purpose of that test?

A. I do not know precisely what the purpose was; that was a test that the chemist suggested, but the exact purpose of that I do not know, except that I understand he wanted to get the rate of flow, however, I am not acquainted with the technique of it.

Q. Well now, who held the watch on this first test that you mentioned?

A. I held the watch.

Q. The one in which you were trying to find out how much carbon monoxide gas would get into the after-stateroom?

A. I did; I held the watch in both tests.

Q. Now prior to making this test to find the concentration in the after-stateroom, had anything been done to the hole in the pipe, that is, the hole in the exhaust pipe on the port side which had been leaking originally?

A. Yes.

Q. What was done?

A. Nothing was done except to leave it free.

Q. Left it free?

A. Yes.

680 Q. Was it allowed to be free during the whole period of the two hours and twenty minutes?

A. Yes.

Q. Now, during the time that this test was going on, that is, during the time that the motors were running two hours and twenty minutes, where did you and the chemist, or whoever else was around there, stay?

A. We went up on the deck; I think it was the after-deck—Captain Roberts, the engineer and Mr. Walker and myself. We stayed around there and waited for the passage of time, until the two hours and twenty minutes elapsed, according to my watch, and then we went down below.

Q. Now, did anybody measure the room at that time?

A. No.

Q. Did you arrange to have the room measured later?

A. I did.

Q. By whom?

A. Captain Roberts.

Q. Did you receive from him a report with regard to the measurements of the room?

A. I did.

Q. What did you do with that report?

A. I transmitted that report to Mr. Walker.

Q. After you transmitted it to him did you receive information from him with regard to the concentration of gas in the room?

A. I did.

581 Mr. Parmer:

I think that is all.

Cross Examination.

By Mr. Mershon:

Q. Mr. Coleman, did the chemist, Mr. Walker, transmit to you a copy of the report that he made here in Court the other night?

A. I don't know whether it was an exact copy, but I have the copy that he sent me.

Q. His report showed that the motors had been operated two hours, didn't it?

A. Yes, I think that is correct. I think he made a mistake in his statement because I am very positive of the fact that it was two hours and twenty minutes.

Q. Didn't he double-check the time with you?

A. No, sir, he wasn't interested in the time particularly; he was depending upon me to keep the time. He was interested in his paraphernalia which he had brought with him that morning.

Q. When this flexible hose was run into the stateroom just where in the stateroom would the end of the hose be; refer to the floor plan of the boat, Petitioner's Exhibit No. 3, and indicate that to us.

A. My best recollection is that the head of the test hose was located at the head of the bed on the port side of the cabin.

Q. How was it kept in place there?

A. Just lying on the floor.

Q. It was lying on the floor?

682

A. Yes.

Q. In other words, it wasn't put up on the bed where the ladies' heads would have been in the bed?

A. It was on the floor.

Q. Now was the door closed tightly while the gas was being put into this stateroom through the vents in the bilge?

A. Yes.

Q. There was no crack in the main door going into the stateroom?

A. No.

Q. How did you get the gas-air out of that stateroom without opening that door?

A. After we finished the two hours and twenty minutes of test we opened the door a trifle bit, just enough to release the pressure on the tube.

Q. Also that would release the gas pressure or the concentration in the room—

A. It was a very, very slight release that was made; in other words, we kept it closed as tightly as possible.

Q. In other words, there was enough release to permit a flow through that hose?

A. All I can tell you is that it was a very slight release. You will have to form your own conclusions.

Q. How long did the chemist let the air flow through that hose without opening the door?

A. I don't know. I know that he drew a small sample out.

683 Q. You don't know?

A. No, sir.

Q. Can you say that he did not include in the sample that he drew from the room the air unmixed with the contents of the room, which air was in the end of the hose which had stayed outside of the stateroom?

A. I am sure he did not do that.

Q. What kind of a container did he draw that sample into?

A. A glass; I think it was a glass bottle.

Q. I am interested in knowing how he pumped or got this specimen of mixed air and gas out of the stateroom.

A. That is something I don't know; I don't know just what mechanism he used to draw the air out.

Q. Do you know whether he placed that sample in a vacuum container of some sort?

A. He placed it in the bottle and sealed it. Now just whether it was a vacuum I do not know.

Q. Then you cannot say that the chemist did not have air in the bottle he placed it in which air would adulterate the sample which the chemist had taken from the stateroom, could you?

A. I can answer that by saying this: that the chemist had been instructed what he was to do. He was instructed to get a sample out of that room so that it would show the exact degree of concentration of carbon monoxide in that room after the two hour and twenty minutes' test. I left the means of doing that to him.

Q. Being present and observing you saw no
684 evidence of a vacuum container in which the sample of gas drawn from the stateroom was?

A. I saw the bottle only.

Q. As far as you know to the contrary there might have been air in the bottle which would dilute the specimen that was taken out of the stateroom?

A. Yes. In view of the fact that the chemist was there for the purpose of getting an exact degree of concentration, I looked to him to see that there would be no outside influence or other air in the bottle that would interfere with a proper test.

Q. So you are not in a position to tell or say that the means adopted by the chemist were efficacious to procure the result which you were trying to determine?

A. No; that would be something for the chemist to answer.

Q. Now, did you observe the bathroom floor, that is, the floor of the bathroom which opened into this double aft-cabin?

A. Probably, but it didn't make any particular impression on me.

Q. But you did state that the bathroom door was closed at the time the test was made?

A. That is correct.

Q. Did you verify the figures that were given by Captain Roberts to you for the purpose of showing the cubical content of this after cabin?

A. No, sir.

Q. Were the figures that Captain Roberts gave you transmitted to the chemist?

685 A. In inspecting my file I find that on August 27, I telegraphed Captain Roberts and asked him to wire me the dimensions of the after-stateroom, so that we could obtain the cubical contents of the same. On the same day he answered by telegram, in which he said that the dimensions of the after-stateroom were 15 feet in width, length 9 feet and depth 6 feet four inches. Those are the figures that I transmitted to our chemist in Tampa.

Q. I will ask you to look at the floor plan of the Friendship II which is in evidence as Petitioner's Exhibit No. 3, for the purpose of refreshing your memory and to state whether the after-cabin is rectangular or cubical in shape as distinguished from—

A. Well, of course the sketch speaks for itself. It is rectangular except for the fact that it curves in toward the stern; in other words, it is not a regular rectangle.

Q. So the figures that the Captain gave you you now admit are incorrect insofar as he stated the cabin was 15 feet across?

A. Well, I think my statement will speak for itself. In other words, I have given you the dimensions, and they were figured by multiplying the three dimensions together. Of course, one end of the stateroom is not as wide as the other end, but the figures that were given covered the width at the widest part of the stateroom.

Q. So if you figured the cubical contents on the dimension of 15 feet, that of course would really result in an answer that would not give the cubical contents that the after-cabin actually had?

686

A. Probably so.

Q: Now the figures which were submitted to you and which you submitted to the chemist, Mr. Coleman, showed the cabin be $6\frac{1}{2}$ feet high from the floor to the ceiling?

A. Six feet and four inches.

Q. They also showed the cabin to be 9 feet deep, did they not?

A. That is correct.

Q. Now point out on the plan here, if you can, where the 9 feet dimension ran from and to.

A. I don't know.

Q. Isn't it a fact that the so-called 9 feet was measured from the door leading into this after-cabin to the back wall of the cabin?

A. I don't know that either.

Q. Is it true then that if it was so measured that it is incorrect as showing the dimension of the after-cabin, because on each side of the cabin is a closet that takes up some of the width?

A. Well, the dimensions would include those closets.

Q. Now in making these tests and giving the chemist the figures did you eliminate the two closets about which you testified you closed the doors?

A. Judging from the fact that I gave him these figures, then I assume the closets were not eliminated.

Q. Did you eliminate from the cubical contents
687 as transmitted to the chemist any amount of space because of the beds and the bunks which were in the stateroom?

A. No.

Q. Did you eliminate any cubical space because of the presence of the dresser which was in the stateroom?

A. No.

Q. Now these bunks and beds and the dresser were in the stateroom at the time of this test you mentioned was made?

A. The beds were. My mind is not clear about the dresser, but I suppose it was there.

Q. Wasn't there a dresser between the two beds against the wall?

A. I have a hazy recollection of it; I wasn't looking particularly for it; it might have been there.

Q. You knew or had been informed at the time the test was made, had you not, that these ladies had been found on the beds in this unconscious condition?

A. Yes, sir.

Q. And yet you did not undertake to draw a sample of the air from the approximate place in the stateroom where their heads would have rested while in bed?

A. Well, as I said, my best recollection is that the head of the hose was on the floor close to the place where one of the ladies would have been lying?

Q. On the floor?

A. On the floor.

Q. Did you have any information that they
688 were laying on the floor?

A. No.

Q. In other words, the pipe was two and one-half feet below where her head would have actually rested while she was in bed?

A. Whatever that distance was.

Q. Did you have any information as to whether carbon monoxide gas was heavier or lighter than air?

A. No; I didn't even inquire; I didn't even think about it. That was a matter for the chemist.

Q. But you were directing the test?

A. I couldn't say right now whether it is heavier or lighter.

Q. But if you were making this test again you would find out?

A. If I were anticipating a cross examination like this I would.

Mr. Mershon:

That is all.

Re-Direct Examination.

By Mr. Parmer:

Q. Mr. Coleman, when the chemist took the gas directly from the pipe by means of a hose, into what sort of a contraption did he run the gas that came from the hose?

A. Are you speaking of the test made with the hose?

Q. Yes.

A. As near as I can remember he had a five-gallon glass bottle, and this bottle was full of water and he ran the pipe into the bottle. This bottle was full of water, and he ran the pipe into the bottle, the first
689 purpose of it was to let the gas coming out of the pipe displace the water.

Q. Now when he pumped the gas, that is, when he pumped the atmosphere out of the room on the other test, do you remember whether he used the same method of pumping the gas into the bottle, starting out with water in it?

A. No, I don't think so. I think he had some other kind of equipment; I think he had something there that sucked that air up into the bottle; just what the system was I don't know; whether it went through the bottle of water first or not I don't know. I didn't have very much to do with it; I wasn't watching his preparations. I figured that he was the one in charge of the experiment there; he was there to accomplish what I told him to accomplish, that is, to get the degree of concentration of gas in that after-stateroom. How he did it was immaterial to me.

Q. Have you any idea of how far away the end of this hose, which was inside of the stateroom, was away from the place where the lady's head might have been?

A. Very close to it.

Q. What do you mean by that?

A. I mean by that that it was right up against the bed.

Ré-Cross Examination.

By Mr. Mershon:

Q. But the end of the hose in the stateroom was laying on the floor below the surface of the boat where the lady's head would hit?

690 A. That is my best recollection at this time.

Mr. Mershon:

That is all.

(Witness excused.)

691 Thereupon CAPTAIN FREDERICK ROBERTS previously called as a witness in behalf of the petitioner, resumed the stand and testified further as follows:

Direct Examination.

By Mr. Parmer:

Q. Captain, I have here two charts, one being numbered 847 and the other 848. Can you point out to us on these charts the location where you were just before you started back to Miami on the morning of March 2nd?

A. Yes.

Q. I wish you would step forward and do it.

A. You mean Monday morning?

Q. Yes. I wish you would also arrange these charts so we can understand them.

The Court:

Give him a pencil and let him put marks to indicate where he was. Put a mark wherever you describe a certain point.

(By Mr. Parmer):

Q. Indicate it with the letter "A".

A. (Witness indicates.)

Q. The letter "A" indicates the place where you were anchored for the night from which you started in the morning, is that right?

A. Yes.

Q. And that is known as Featherbed Shoals?

A. Featherbed Shoals.

Q. I notice that this is called "Featherbed Bank" in that region.

692 A. Yes, Featherbed Bank.

Q. Featherbed Bank?

A. Yes.

Q. Now will you point out the route you took on the way back to the docks in Miami?

A. Here it is right here. I will mark that out now.

The Court:

Run your pencil over the line.

A. (Witness indicates on map.)

Q. Now will you please point out and mark the place at which you were when you first received information that the ladies were in trouble below in their bunks?

A. This (indicating) is just as close as I can give it; I remember this beacon here (indicating).

Q. You are pointing to a beacon?

A. Yes.

Q. Put a "B" where the beacon is.

A. (Witness indicates on diagram.)

Q. Now put the letter "C" where you think you were.

A. (Witness indicates on map.)

Q. Now what is your best recollection of how long you were occupied in going from the place marked "A" to the place marked "C"?

A. It wouldn't take over an hour and fifteen minutes or an hour and twenty minutes to go from this place to here (indicating).

Q. Now, comparing the distance from "A" to "C" with the distance from "C" to the dock, which was the greater distance would you say?

A. This distance (indicating).

693 Q. That is, you mean the distance from "A" to "C"?

A. Yes.

Q. From "A" to "C"?

A. Yes.

Q. Have you any idea of how much more than half of the distance of the total distance it was?

A. It couldn't have been over a mile or a mile and a half.

Q. How long after you received word with regard to the girls being in their bunks was it before you went down there and got them out of the room?

A. Right straight.

Q. How many minutes would you say?

A. It took me about three minutes to get down below.

Q. How long did it take you to get them out of the room?

A. Five or ten minutes.

Q. After you got there?

A. Yes.

Mr. Parmer:

I think that is all.

The Court:

Where did you start from on Sunday afternoon to go to the point "A"; in other words, where were you anchored on Sunday?

The Witness:
Here (indicating).

The Court:
Put the letter "D" there.

The Witness:
(Indicates on diagram.)

The Court:
Now, trace a line showing how you went from "D" to "A".

694 The Witness:
(The witness indicates on diagram.)

Mr. Parmer:
That is all.

Cross Examination.

By Mr. Mershon:

Q. Captain, do you now say that from the time you discovered the young ladies and brought them out on the deck, that it was about one hour before you got into Royal Palm Dock with them?

A. Right around an hour.

Q. You think it was an even hour?

A. It would have to be a full hour.

Q. So the young ladies remained up there in the open fresh air unconscious for over an hour and continued in that condition until Dr. Spencer Howell had been called and arrived on the boat?

A. I didn't say that.

Q. I am asking you if that is true or untrue?

A. I couldn't answer that question.

Q. You can answer this question though: that the young lady, Mrs. Just, remained in the open air on the back deck, on the upper deck at the stern of the boat, and Miss Grunow remained in Mr. Yeiser's stateroom where you had placed her, with the windows all open, for at least one hour until you got into the Royal Palm Dock?

A. Yes, sir.

Q. During that time you didn't see them at all?
695

A. I never went around them at all; no, sir.

Q. How long was it after you got into the dock, the Royal Palm Dock, until Dr. Spencer Howell came aboard?

A. Not over thirty minutes.

Q. Now, Captain, when was the entry made in this log showing that the Friendship II on the morning of March 2nd, 1936, arrived at the Royal Palm Dock at 9:10 in the morning?

A. The Chief would have to tell you that.

Q. You don't know whether it was made that day or later?

A. No, sir.

Q. You don't know when it was made?

A. No.

Q. You made no effort to check up the entries to see that they were properly made?

A. No, sir.

Q. If Dr. Spencer Howell's records should show that he went aboard at 8:00 o'clock, would he be mistaken or not?

A. I don't know nothing about that.

Q. You don't know when he came aboard?

A. I don't know the exact time.

Q. You cannot say whether it was 8:00 or 9:40, can you?

A. No, but I know he was there 30 minutes after he was called, and he was called just as quick as we could send for him.

Mr. Mershon:
That is all.

696

Re-Direct Examination.

By Mr. Parmer:

Q. Weren't you endeavoring to make some appointment here in Miami for Mr. McKay?

A. Yes.

Q. What time was that appointment?

A. At 10:00 o'clock.

The Court:

Were you still navigating when the ladies were brought up from below to the upper deck?

The Witness:

Yes.

The Court:

Who was at the wheel?

The Witness:

I was at the wheel.

The Court:

I thought you actually went down and took them up.

The Witness:

Yes, I did; the waiter came up and called me, and I turned the wheel over to a sailor; he probably had the wheel twenty minutes or thirty minutes.

Mr. Parmer:

I neglected to have these charts marked in evidence.

The Court:

Let them be filed in evidence.

(Thereupon, the charts above referred to were marked Petitioner's Exhibits 4-A and 4-B, respectively.)

(Witness excused.)

697 Thereupon J. N. PATTEN was called as a witness in behalf of the petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. What is your full name?

A. J. N. Patten.

Q. What is your business?

A. Marine surveyor.

Q. Are you with the vessel known as the Friendship II?

A. Yes.

Q. Were you on board the Friendship II prior to the time Mr. Yeiser bought it?

A. Yes.

Q. Were you on board the Friendship II after the time Mr. Yeiser bought it?

A. Yes, sir.

Q. Now did you go on board that vessel recently?

A. Yesterday.

Q. Where was she?

A. Over at Hibiscus Island.

Q. At that time did you make measurements of the after-stateroom?

A. Yes, sir.

Q. Did you ascertain what the cubic footage of that room was?

698 A. Yes, sir.

Q. Now, was that room in the same condition as far as appointments were concerned as when Mr. Yeiser had it?

A. As near as I could tell the furniture was all there.

Q. Were the closets the same as they had been on former occasions?

A. Yes, they were the same.

Q. Now will you tell us what you found the measurements of that after-stateroom to be?

Mr. Mershon:

We object to the question as an attempt by the petitioner to impeach the testimony of his own witnesses who have previously testified.

Mr. Parmer:

Not at all.

The Court:

The objection is overruled.

Mr. Mershon:

It may be that our objection is premature.

Q. Go ahead and answer the question.

A. Do you want me to explain what measurements you took, what the measurements were, what deductions you made, if any; and how they were made.

A. The shape of that after-cabin naturally is narrower at its ends, and in order to take the mean width—

Mr. Mershon:

We object to that and move to strike out "to take the mean width."

The Court:

We are interested in the result as compared with the result given by Mr. Walker. I will overrule the objection.

699 (By Mr. Parmer):

Q. Tell us first what result you arrived at after making the various deductions.

A. The gross cubic feet was 810.78, plus the offset of four windows, which amounted to 4.2 cubic feet. The total gross was 814.98. The deductions amounted to 23.9 cubic feet, giving a net of 790.09 cubic feet. Do you want me to read the deductions and what they are?

Q. Yes.

A. I will just read them off.

Carlines 2" x 2.75" x 12'-10"	58.28 cubic inches
Shelf area: 60" x 5" x 7/8"	262. cubic inches
Two partitions 60" x 48" x 7/8"	2520. cubic inches
Sides of berths 6 1/2' x 3 1/2' x 7/8"	5945. cubic inches
Side moulding 8'10" x 10" x 1/2"	1060. cubic inches
Closet partitions and doors, 49" x 6'-x8"	
x 2" x 6'-8" x 3/4"	2640. cubic inches
One dressing table—17 1/2" x 36" x 42"	
plus 92 cubic inches	785. cubic inches
	1528.69 cubic inches
	26,650. cubic inches

700 That is a total of 41,448.97 cubic inches or 23.9 cubic feet. That is all of the deductions I made.

Q. Did you deduct from the gross cubic footage everything which interfered with the open space within that enclosure?

A. Yes.

Mr. Mayne:

That is a conclusion of the witness.

The Court:

It is subject to cross-examination. I do not think it is subject to a motion to strike, so I will overrule the objection.

Mr. Parmer:

That is all.

Cross Examination.

By Mr. Mershon:

Q. Mr. Patten, the figures you have just given were read by you directly from a piece of paper that you have in your hand?

A. Yes, sir.

Q. Without looking at that paper do you have any independent recollection either of the figures or the deductions which you made or what you did?

A. Some.

Q. Without looking at the paper—

A. The deductions are 23.9 cubic feet.

Q. Do you have any independent recollection of the matters shown on that paper and the matters which you read into the record here, if you do not look at that paper?

A. I have a copy of that.

Q. Do you have any independent recollection of the matters shown on that paper and the matters
701 which you just read into the record?

A. I said I had a copy.

Q. Are you depending either on this paper or the copy to know exactly what you did?

A. No, sir; I know what I did.

Q. Please repeat exactly what you did and give the—

A. I can't remember all of these cubic inches.

Q. Can you remember all of the deductions that you made?

A. I can itemize them, yes.

Q. Without this paper?

A. Yes. I deducted and measured the columns, the two fore and aft columns, the mouldings, all of the side shelves, the boxes, the closet door—

Q. Do you have any recollection of the measurements covering these deductions without looking at this paper?

A. No, I wouldn't want to answer that correctly, however, this paper is correct.

Mr. Mershon:

Your Honor, we will not move to strike the testimony, but I will ask that counsel let the paper go in just as it is.

Mr. Parmer:

I will be delighted.

The Court:

Let it be marked in evidence.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 5.)

(By Mr. Mershon):

Q. Captain, did you make any deductions from the cubical content of that after-cabin by reason of
702 any baggage or luggage?

A. No, I did not. They didn't have any baggage in there excepting a pair of shoes or maybe a shirt hanging in the closet. There was very little in that stateroom.

Q. In deducting for this dresser and table which you say was $17\frac{1}{2}$ by 36 by 42 inches, did you or did you not deduct the full cubical contents of that dresser?

A. No, sir.

Q. You made no deduction for the interior of the dresser?

A. No, sir.

Q. You made no deduction for the inside of the drawers.

A. No.

Q. You assumed that the dresser was empty and had no clothes or any other solid objects in it?

A. Yes, I assumed that.

Q. Is that right?

A. Yes. They are living aboard that yacht now, but there was very little in that stateroom.

Q. You say someone is living aboard the Friendship II now?

A. Yes, the new owner.

Q. What is his name?

A. Mueller, I believe.

Q. Did he give you permission to go aboard for the purpose of making your measurements?

A. Yes.

Q. When did you go there?

A. Yesterday afternoon.

703 Q. Where is she moored now?

A. At Hibiscus Island.

Q. Did you make any deductions for the presence of the bodies, the physical corporeal bodies or anatomies of persons in that stateroom?

A. No, the lady left from the stateroom before I went in.

Q. You did not measure that lady?

A. No, but I was willing to, though.

Q. If there had been two ladies, one medium sized and one rather large, in there at the time it would have reduced your cubical contents?

A. Except for the lung cavities of both of them.

Q. Did you make any deduction for the presence of any clothing in the closets, the two closets connecting into the stateroom?

A. No; there were one or two dresses in there, but they would not naturally displace any appreciable amount of atmosphere.

Q. What is the color of the bed in there?

A. It had a sort of blue slip on it.

Q. I mean the so-called built-in bunks.

A. That is mahogany.

Q. As a matter of fact, are there not single beds installed there?

A. Yes, they are built-in, single berths.

Q. Does this photograph, identified as Claimant's Exhibit No. 1 appear to be a fair representation of 704 that stateroom as you saw it?

A. That is correct, that is looking at the port side forward.

Q. And does Claimant's Exhibit No. 8, which is another picture, appear to be—

A. This is on the other side, that is the starboard side.

Q. That is the starboard side of the same cabin?

A. Yes.

Q. You say you were familiar with the Friendship II and had been aboard her on previous occasions?

A. Yes, sir.

Q. When was the first time that you went aboard her, if you recall?

A. Can I look at my records?

Q. Yes.

A. I made a survey of her in 1933; that was when Dr. Adams owned it.

Q. You made a survey of her for Dr. Adams?

A. Yes.

Q. And you went aboard her at that time?

A. Yes, just to make a condition survey.

Q. To survey her condition?

A. Yes, for insurance purposes.

Q. What did you at that time find her condition to be?

Mr. Parmer:

I do not think that has any relevancy to the measurements of the room made yesterday. I intend to
705 come later to the other points.

The Court:

The cross-examination should be limited to the prior examination.

Mr. Mershon:

If your Honor please, I submit that it is proper cross-examination, both to develop the interest of the witness as affecting his possible credibility and also to ascertain the witness' knowledge and familiarity with the boat which he has testified he had been previously aboard. We have a right to go into the question of the witness' knowledge of the condition of that boat, when he says he knew her condition.

The Court:

It is not necessary to argue it. The cross-examination will be limited to the prior examination so far as affecting the after-stateroom.

Mr. Mershon:

Do I understand, Mr. Parmer, that you will recall this witness?

Mr. Parmer:

Yes.

Mr. Mershon:

Then we will not ask the Court to place the witness under subpoena from the bench, Mr. Parmer, in view of the fact that you say you will recall him.

The Court:

Any further cross-examination.

Mr. Mershon:

Not at this time.

The Court:

Any further re-direct examination?

Mr. Parmer:

I think that is all.

706

Thereupon: VERTA NORD OLLIS was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. Please state your name.

A. Verta Nord Ollis.

Q. Where do you live?

A. 629 S. W. 10th Avenue.

Q. That is in Miami?

A. Yes.

Q. What is your business or profession?

A. Registered nurse.

Q. How long have you been a registered nurse?

A. Four years. *en*

Q. Now did you ever act as a nurse on the yacht Friendship II?

A. I did.

Q. At about what period, if you recall?

A. Well, I can't remember exactly, but it was for about one month.

Q. Well, who were you taking care of at that time?

A. Mr. Henry Yeiser.

Q. Were you acting as nurse at the time of his death?

A. I was.

Q. And the month during which you were his nurse preceded his death, did it not?

707 A. Yes.

Q. And during the time that you were acting as nurse for Mr. Yeiser where was the vessel?

A. It was docked at the Royal Palm Dock.

Q. Were you nursing him during the entire period that the vessel was docked there?

A. Yes.

Q. And from whom did you obtain your orders with regard to what you should do in connection with nursing Mr. Yeiser?

A. Dr. Spencer Howell.

Q. Was there another nurse on the case as well as yourself?

A. Yes.

Q. And what was her name?

A. Miss Ann Norwood.

Q. Is she living now?

A. No.

Q. Now exactly what did you do for Mr. Yeiser during the time you were acting as his nurse?

A. I carried out the doctor's orders; I ordered his meals, told him what time he should retire and what time he should get up and gave him medications and so much gin.

Q. So much gin?

A. Yes.

Q. Did the consumption of gin increase or decrease with the progress of the treatment?

A. Decreased.

708 Q. Now do you remember the occasion when Mr. Yeiser, in company with Mr. McKay and two ladies went on a trip around the beginning of March or the end of February?

A. I do.

Q. Had you been on the boat just prior to that trip?

A. Yes.

Q. On any of the days prior to the beginning of that trip had you seen Mr. McKay on board?

A. Yes.

Q. Well now can you tell us which day it was that you saw Mr. McKay before the trip commenced?

A. Two days before.

Q. That would be Wednesday, if the ship left on Friday?

A. Yes.

Q. Can you tell us what time of the day it was that you saw Mr. McKay on board the vessel?

A. I should say it was around 7:30 or 8:00 o'clock in the evening.

Q. Where on the boat did you see him at that time?

A. He was in Mr. Yeiser's cabin and in the waiting room part of the time.

Q. Was Mr. Yeiser there too?

A. Yes.

Q. Were you there?

A. Yes.

Q. Did you hear any conversation at that time between Mr. Yeiser and Mr. McKay?

709 A. I heard the conversation; they were making plans for a trip, and as far as repeating the conversation, I didn't pay any attention to it at the time.

Q. Did you gather the purport of it?

A. Yes, they were making plans as to what time they would sail, where they were going and what they would take along, but I cannot repeat any of the conversation.

Q. Did you receive an offer to go on the trip?

A. No.

Q. You didn't go on that trip, did you?

A. No.

Q. Were you actually on the vessel the day that the ship pulled out?

A. Yes.

Q. Until what time?

A. Until about 8:00 o'clock in the morning.

Q. And what was Mr. Yeiser's general condition on that day with respect to what it had been when you came on the case?

A. Improved.

Q. Had he become more active?

A. Yes.

Q. To what extent?

A. He didn't drink as much; he was able to move around without assistance of us, without assistance of his valet or any one helping him; his appetite was better and he wasn't as nervous.

Q. Had he been ashore?

A. I can't remember, but I think one time;
710 yes, once.

Q. Well, now on the day the boat sailed, which was on Friday, did you see any packages come on board the ship?

A. In the afternoon before.

Q. You mean on Thursday?

A. Yes.

Q. Do you know where the packages were put?

A. Yes.

Q. Whereabouts were they put?

A. In the pantry room on the lower deck.

Q. Did you see those packages after they had been brought on board the ship?

A. Yes.

Q. How long after they had been brought on board the ship did you see them?

A. Five or ten minutes.

Q. What was the occasion for your seeing the packages?

A. I went down to pour Mr. Yeiser a drink; that is where we kept his "drinks".

Q. You mean that is where you kept his liquor?

A. Yes, his gin.

Q. And what did you see when you got to where the packages were?

A. The package had been torn open, and two bottles of gin taken out of the package.

Q. Did you see them taken out of the package?

A. No. Well, I should have said there was a package there containing something.

711 Q. You didn't see what was inside the package?

A. No.

Q. Did you see the two bottles of gin?

A. Yes.

Q. How close were they to the package?

A. Right beside it.

Q. What did you do with the two bottles of gin?

A. I opened one of them and poured a half an ounce out.

Q. What did you do with the bottles?

A. Left them where they were.

Q. Did you get gin from either one of these bottles later on?

A. Yes, sir.

Q. Well, I take it that you were not there when the vessel pulled out?

A. No.

Q. Did you on the following Monday return to the vessel?

A. Yes.

Q. About what time of the day?

A. Around six o'clock in the afternoon.

- Q. Was the other nurse there when you arrived?
 A. Yes.
 Q. Did she stay or did she leave?
 A. She gave me the report and left.
 Q. Now from the time that you came on the vessel on Monday and thereafter did you see Miss Grunow?
 A. Yes, I did.
 Q. Whereabouts did you see her?
 712 A. In Mr. Yeiser's cabin.
 Q. Where was she in the cabin?
 A. On the bed.
 Q. Did you see Mr. Yeiser?
 A. Yes.
 Q. Where was he?
 A. He was also on the bed.
 Q. Also on the bed?
 A. Yes.
 Q. Did you serve them anything?
 A. Yes.
 Q. What did you serve them?
 A. Gin.
 Q. How many times?
 A. Three or four; I couldn't tell you for sure.
 Q. Between what hours did you serve them three or four times gin?
 A. Between six and ten.
 Q. Did you have any conversations with Miss Grunow?
 A. Yes.
 Q. Will you tell us what those conversations were?
 A. I told her she must dress and leave the boat, that I had orders from Dr. Howell that she was to leave.
 Q. When did you tell her that?
 A. Around 8:30 or 9:00 o'clock; I imagine it was right after Dr. Howell made his call.
 Q. And what did Miss Grunow say to you?
 A. She told me to watch and if I saw anyone coming on board to tell them that she was sick and didn't want to leave the boat.
 713

Q. Did you have any other conversations with her about leaving the boat?

A. Well, she told me several times that she didn't want to leave and I told her I had nothing to do with that, and that I was only Mr. Yeiser's nurse.

Q. Did Mr. Yeiser say anything in her presence while she was there with regard to whether or not she should leave the boat?

A. He told me to let her stay if she wanted to.

Q. Did you do anything after Mr. Yeiser said that with regard to letting her stay?

A. When Mr. McKay came on the boat I went and took her clothes and told her to come and get her clothes on. She raised up and dressed herself, and I helped put her shoes on, and Mr. McKay took her off.

Q. Now during the time that you were on the vessel did you notice any inability on her part to carry on a conversation?

Mr. Mershon:

We object to the question as leading.

Mr. Parmer:

I will withdraw it.

(By Mr. Parmer):

Q. During the time you were on the boat will you tell us how she talked?

A. She impressed me as being intoxicated.

Mr. Mershon:

We object to the answer and move to strike it on the ground that it is a mere conclusion of the witness

714 and is not responsive to the question.

Mr. Parmer:

I will consent.

The Court:

The objection is sustained and the motion to strike is granted.

(By Mr. Parmer):

Q. Will you describe how she talked and we will form our own conclusions as to what condition she was in. Just tell us how she talked.

A. I don't think I could tell you how a drunk talked very well.

Q. Did she talk as an ordinary person talked?

A. No, sir; she talked as an ordinary drunk person would talk.

Q. Did she talk like a person who was not intoxicated?

A. No.

Mr. Mershon:

We move to strike that answer, if your Honor please, as being subject to the same objection as the other one, that is, it is a mere conclusion of the witness. She has not testified to any facts or circumstances from which that conclusion may be drawn.

The Court:

The motion is denied.

Mr. Mershon:

I also object on the grounds that it is irrelevant and immaterial; the time is too remote. The testimony relates to a time long after the time of the transaction or incident upon which the Claimants' claim is based, and there is the additional objection on the part of Mrs. Just that it is not relevant or material, that is, with respect to Mrs. Just's claim, because she was in the hospital unconscious at that time.

715 / The Court:

Certainly this testimony would be restricted to Miss Gruner. The objection is overruled.

(By Mr. Parmer):

Q. You stated that you had her dress and that she dressed herself. Now, while she was in the room what clothing did she have on from six until the time she started to leave?

A. A gown.

Q. You mean a night gown?

A. Yes, sir.

Mr. Parmer:

That is all.

Cross Examination.

By Mr. Mershon:

Q. When you first went aboard the yacht Friendship II to nurse Mr. Yeiser, did you go as what they call the night nurse?

A. Yes, sir.

Q. You performed twelve-hour duty?

A. Yes.

Q. What time would you go on duty and what time would you get off?

A. I would go on six or seven in the afternoon and leave about eight o'clock in the morning.

Q. Who first called you on that case?

A. Dr. Spencer Howell.

Q. You did not go on that case until after Dr. Howell had commenced treating Mr. Yeiser?

A. No.

Q. How long did you say you were nursing Mr. Yeiser before his death?

716 A. I can't remember exactly.

Q. Didn't you say it was about a month?

A. About three weeks or a month.

Q. Which is it?

A. Between three weeks and a month; I can't make sure.

Q. There was nothing about the case that would impress on you either the time you went to work on that case or the day when Mr. Yeiser died?

A. No.

Q. How did Mr. Yeiser spend his time, or, rather, where did he spend his time aboard the boat from the time you first started nursing him until they began the trip in February 28, 1936—how would he occupy his time?

A. Reading.

Q. Was he in bed all the time?

A. No.

Q. What was his mode of living on the boat; how did he occupy himself?

A. He listened to the radio and he read on the upper deck in the waiting room.

Q. Would he ever go up to the forepart of the boat?

A. I never saw him up there. Do you mean in the Captain's quarters?

Q. Yes, in the Captain's quarters.

A. I have seen him walk outside, but I don't remember seeing him go in the Captain's quarters.

717 Q. You have seen him walk around the deck of the boat?

A. Yes.

Q. And of course in the evening he would retire; what time would he retire and go to bed?

A. Twelve o'clock.

Q. Would he have company aboard the boat?

A. Very seldom.

Q. But he did have company aboard the boat?

A. Yes.

Q. Well, when you were nursing Mr. Yeiser before this trip how would he dress aboard the boat?

A. A polo shirt and dress pants.

Q. Did he always wear his shirt and trousers?

A. Yes, sir.

Q. Do you mean that he did not go around the boat in his pajamas with a dressing-gown or something over them?

A. Not unless he was in the bed retired for the night, then he had on his pajamas; he didn't go outside of his cabin with his dressing-gown on that I remember.

Q. Did he get up in the morning before he left the boat?

A. No.

Q. You never saw him get up and start the day off?

A. No.

Q. So you don't know of your own knowledge that he had on his pants and polo shirt during the day?

A. Only from what the other nurse said.

718 Q. So you are telling something that the other nurse told you, something that you do not know of your own knowledge?

A. I know that I would see him there; when I got there in the evenings I asked the other nurse, and I would take the other nurse's word for it, which I had a right to do.

Q. So these other things you have testified to are based on what someone else told you?

A. No.

Q. You said that when he got up in the morning he immediately put on his shirt and trousers; is that what someone else told you?

Mr. Parmer:

I object to the question; the witness did not say that was the only time she saw him.

The Court: .

The objection is overruled. Answer the question. This is an intelligent witness and she can take care of herself all right. Read the question to her:

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. Did you ask me that question?

Q. Yes.

A. I don't say he did that; I didn't tell you at first that he did that.

Q. Well, I am asking you now.

A. Well, I never saw him myself outside his cabin until after six o'clock in the evening.

Q. You never saw Mr. Yeiser outside of his cabin until after six in the evening, is that right?

719 A. That is right.

Q. You say that he went to bed about twelve o'clock and he was always in bed when you left the following morning?

A. That is right.

Q. Now, I will ask you whether to your knowledge Mr. Yeiser customarily in the morning and in the daytime went about his boat or stayed in his cabin dressed only in his pajamas with a dressing-gown or some similar article of wearing apparel over them. Do you know whether he did or not?

A. I don't know.

Q. Do you know of your own knowledge when during the day Mr. Yeiser was accustomed to put on his trousers and his shirt, of your own knowledge?

A. Not being there I wouldn't know; I only have the other nurse's word for it.

Q. Who have you talked to about this case and about your testifying here, if to anyone?

A. Do I have to answer that?

Mr. Parmer:

Yes.

A. I talked to the crew.

Q. What members of the crew?

A. I talked to the Chief and one of the sailors, but not very much.

Q. When did you talk to them?

A. When we heard this case was coming up, we just said—just merely mentioned it; we didn't talk much about it.

720 Q. How long ago was it that you talked about it?

A. Three or four days ago.

Q. And you had not discussed this case with anybody until three or four days ago since Mr. Yeiser's death?

A. No, not until the case came up again.

Q. And that was three or four days ago?

A. No, that was when the case started; it was about one week ago when the case opened.

Q. How many times have you discussed with the members of the crew anything about this case?

A. Once with one of the sailors and once with the engineer.

Q. You never discussed it with Captain Roberts?

A. No.

Q. Are these two occasions the only times you have discussed this case with anyone?

A. Yes..

Q. Is that right?

A. Yes.

Q. Have you not talked to any lawyers about it?

A. I only talked to Mr. Parmer when he told me he wanted me to come down as a witness.

Q. You didn't think to mention that awhile ago?

A. I didn't know that you meant the lawyers. You said the crew; you said the crew, didn't you?

Q. Madam, I asked you if you talked to anyone. I don't want to argue with you. Did you talk to anybody in this wide world, man, woman or child, white or black, lawyer, crew or otherwise; I want to know who else have you discussed this case with prior to this hearing except Mr. Parmer, Mr. Blount and the members of the crew.

A. That is all.

Q. What was the name of the other member of the crew?

A. Chief Blount and Chubby Mickle.

Q. When was the first discussion you had of this case and your testifying in it after the death of Mr. Yeiser; when was the first time you discussed with anybody about testifying in this case?

A. A year ago I talked to Mr. Coleman.

Q. Now are you changing your testimony again and saying that you talked to Mr. Coleman in addition to Mr. Parmer, Mr. Blount and Chubby Mickle; do you mean to say that you have talked to Mr. Coleman?

A. You said since this case come up, did you not?

Mr. Mershon:

Mr. Reporter, with the Court's permission will you turn back and read the last three questions and answers?

(Thereupon the preceding three questions and answers thereto were read by the Reporter as above recorded.)

(By Mr. Mershon):

Q. Did you talk to anyone else whatsoever at any time concerning your testifying in this case except Mr. Coleman, Mr. Parmer, Mr. Blount and Mr. Mickle?

A. No.

Q. You have not discussed it with Captain Roberts?

A. No.

722 Q. Have you discussed this case with Dr. Howell, Dr. Spencer Howell?

A. No. He told me he testified, but we didn't discuss the case; I just saw him and he told me that he had testified and he thought they would probably use me as a witness. We didn't discuss anything that he said or anything about the case.

Q. Did he ask you if you remembered certain things?

A. No.

Q. Are you quite sure of that?

A. Yes.

Q. Who else was present when you talked to Dr. Howell about the case, that is, about whatever you discussed with him?

A. No one.

Q. When you talked to Mr. Coleman about the case, meaning Mr. Bert Coleman here of the firm of Loftin, Stokes & Calkins, attorneys for the Petitioner, the administrator of the Yeiser estate,—when was that?

A. It was one year ago this past August.

Q. And you have not discussed the case with him since that time?

A. No.

Q. Did you give Mr. Coleman a written statement at that time, a written statement signed by you?

A. No, not that I remember; I was in the hospital and I was ill.

Q. Did you ever give Mr. Coleman or anyone else a statement which was signed in writing by you at that time or at any other time; have you ever given a written statement signed by you setting forth what you knew about this case?

723

A. No, I have not.

Q. Did you ask Mr. Yeiser what to do about Miss Grunow leaving the boat?

A. No.

Q. What occasioned him telling you then to let her stay on board if she wanted to?

A. He heard Miss Grunow tell me that she wanted to stay.

Q. Where was Miss Grunow at that time?

A. She was propped up on the bed.

Q. What do you mean by "propped" up?

A. With pillows.

Q. Where was Mr. Yeiser?

A. He was also in the bed.

Q. Was he on the inside of the bed or the outside?

A. The outside.

Q. Was he also propped up?

A. Yes.

Q. Did he hear Miss Grunow tell you, as you say, that she would pretend that she was sick if anyone came?

A. No.

Q. Can you account for Mr. Yeiser's not having heard the statement, that statement, if he heard the rest of what Miss Grunow said in your presence and in his presence?

A. He was in the bathroom.

Q. How long did he remain there?

A. Approximately five minutes, I should say.

724 Q. How long did it take Miss Grunow to tell you that she wanted to stay on the boat and if anyone came she was going to pretend to be sick?

A. Not very long.

Q. Did she tell you first that she wanted to stay on the boat; did she make a separate statement first or did she make it all at the same time?

A. I told her that Dr. Howell had told me to get her off the boat. He said that if she stayed there and wanted drinks it would make Mr. Yeiser want more to drink. It was then she said, "I want to stay on the boat." I said, "I cannot let you," and she said, "Oh, please, let me stay; you wait and if you see someone coming on board the

boat, come back and tell me so I can pretend I am sick. I don't want to leave the boat."

Q. Mr. Yeiser heard her say that she didn't want to leave the boat, but he didn't hear the part of the statement that if anybody came on the boat that she would pretend to be sick, is that right?

A. That is right.

Q. How much of these two bottles of gin which you found in the pantry on Thursday afternoon did you use or dispense before you left the next morning.

A. Well, I gave Mr. Yeiser approximately half an ounce either two or three times before he retired for the night on Thursday. I didn't give him any before
725 I left Friday morning.

Q. Now, did you see the gin before you left Friday morning and know that there was a full bottle which hadn't been touched and another bottle that had just two or three ounces gone out of it?

A. Yes.

Q. And you know that Friday morning when you left there was one full bottle and part of another?

A. Yes.

Q. And that was six o'clock Friday morning?

A. Eight o'clock Friday morning.

Q. Eight o'clock?

A. Yes.

Q. Mr. Yeiser did most of his drinking in the day-time, didn't he, when he was awake?

A. About the same; he was only allowed so much; he drank about as much at night as he did in the day-time.

Q. You mean at the same rate?

A. Yes.

Q. So he would actually consume more during his waking hours in the day-time than during the night, a part of which at least he was asleep?

A. Yes.

Q. How often did they get gin and bring it aboard for Mr. Yeiser while you were there?

A. I don't know.

Q. Wasn't it a customary thing to always find
726 bottles of gin in the pantry?

A. Yes.

Q. They kept a supply in the pantry, didn't they?

A. Yes.

Q. And there was nothing unusual about your finding two quarts of gin in the pantry?

A. Not about finding two quarts, but there was something unusual about seeing the rest of the supply there.

Q. Have you testified as to any other supply of gin or liquor there?

A. Yes. I testified about a package being there in which these two bottles had been taken from.

Q. Did you see that package?

A. Yes.

Q. How much gin was in it?

A. I don't know.

Q. What size package was it?

A. About this long (indicating).

Q. Was it a paper package?

A. It had brown paper on the outside; I didn't notice whether it was in a pasteboard box or not.

Q. Was it in a box?

A. I don't know.

Q. Do you know what was in that package?

A. I saw where two bottles had come out of it; it looked like—

Q. Do you know what was in that package?

727 A. Yes.

Q. Do you know who ordered it?

A. No.

Q. Now in what quantities had it been the custom to bring gin and liquor aboard the boat for Mr. Yeiser's use?

A. I don't know.

Q. What was the most you had ever seen brought aboard at any time prior to the time you saw this on Thursday?

A. I never saw it brought aboard before.

Q. What was the most you had ever found in the pantry there prior to that time?

A. Not over two quarts.

Q. Would that be replaced two quarts at a time?

A. Not always.

Q. How often would they replace it in the pantry?

A. When I would have a bottle almost emptied.

Q. How long would it take you to empty a bottle?

A. I don't know.

Q. Do you know how much gin the day nurse supplied to Mr. Yeiser?

A. She had it on the record that he was to have half an ounce an hour.

Q. When you first started on the case how much gin was Mr. Yeiser drinking a day?

A. I don't know.

Q. Was it four quarts a day?

A. I don't know.

Q. Was it more than four ounces a day?

728 A. Yes.

Q. You have no idea how much more?

A. Quite a bit more.

Q. Would you say it wasn't four quarts?

A. Yes.

Q. Would you say it wasn't three quarts a day?

A. Yes.

Q. Would you say it wasn't two quarts a day?

A. No, I wouldn't say that.

Q. You think it was about two quarts a day?

A. I don't know.

Q. Now if Dr. Howell's records show and if Dr. Howell testified that he was only on that case ten days before this trip was taken, would you say that you were on that case more than ten days before this trip was taken?

A. I couldn't faithfully say how long I was on the case.

Q. Your recollection is not clear on that?

A. No.

Q. Had you ever seen Miss Grunow before that night?

A. No.

Q. Have you ever seen her since she walked off the boat that night?

A. No.

Q. Did you see Mr. McKay come aboard the Friendship II to get Miss Grunow and she went away with him?

A. Yes.

Q. Who escorted Miss Gruner from the boat
729 to the shore?

A. Mr. Yeiser took her off the boat; Mr. McKay took her off the boat and I stayed with Mr. Yeiser. I don't know who helped her to get off the boat.

Q. You say that Mr. McKay escorted Miss Gruner from Mr. Yeiser's cabin off the boat?

A. Yes.

Q. Do you know what time that was?

A. Around ten o'clock.

Q. Could it have been earlier than that?

A. No.

Q. You are positive of that?

A. Yes.

Q. Did either Chief Blount or Captain Roberts escort Miss Gruner off the boat onto the dock?

A. I don't know; I only saw Mr. McKay take her outside the boat.

Q. Did you see Mr. McKay lead her down or escort her down to the gangplank and onto the dock?

A. No; I never saw him take her down the gangplank; I only saw him when he took her out of the door.

Q. Out of the door of the cabin?

A. Yes.

Q. So you did not see him escort her off the boat?

A. No, not down the gangplank.

Q. Where did you find Miss Gruner's clothes when you gave them to her and told her to dress herself?

A. In the cabin in the lower deck.

Q. The double cabin?

730 A. Yes.

Q. And it was after Mr. McKay came aboard that you went down there and got her clothes and brought them to her?

A. Yes.

Mr. Mershon:

That is all.

Re-Direct Examination.

By Mr. Parmer:

Q. Did you in preparing drinks for Mr. Yeiser take the gin as it was in the bottle or did you put anything in it before you served it to him?

A. I made it about half gin and about half water.

Q. Was there any medicine that you put in the drinks before you served him?

A. No, I didn't mix his medicine with his drinks.

Mr. Parmer:

That is all.

The Court:

All right; we will adjourn until two o'clock.

731 Thereupon: DR. FRANK B. VOEIS was called as a witness on behalf of the Petitioner, and hav-

ing been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. What is your full name?

A. Dr. Frank B. Voris.

Q. What is your address?

A. Office address 541 Lincoln Road.

Q. Is that your home address or business address?

A. Office.

Q. What is your home address?

A. 6655 Brevity Lane, LaGorce Island.

Q. How long have you been a practicing physician in Florida?

A. I came here in June of 1933 at the Jackson Memorial Hospital and took the examinations in December of 1933.

Q. Are you married?

A. Yes, sir.

Q. Now in March, 1936, were you in any way associated with the St. Francis Hospital?

A. Yes.

Q. In what capacity?

A. I was head Resident, doing their surgery for them.

Q. What does "head resident" mean?

A. There was another Resident under me; we did practically internship work, however, I was practicing at the time and had an office in town, and I was
732 doing extra work for them and living at the hospital and more or less assisting in consultations and looking after patients that doctors asked me to

Q. Now were you there when Mrs. Just was brought to the hospital?

A. Yes, I was there.

Q. Did you take any part in her treatment?

A. No, sir.

Q. Who treated her there?

A. Dr. Howell was the doctor.

Q. Well at any time after that did you visit Mrs. Just?

A. I saw her for a minute or two with Dr. Howell, and I saw her when Dr. Harris came in for a few minutes, and then two or three days later I saw her for about five or six minutes, and then another time, a day or two later, I just looked in and she was sleeping and I didn't disturb her.

Q. On this occasion, which was two or three days after the day on which she came in, will you tell us where you saw her then?

A. You mean the room of what?

Q. Yes; was it in a room?

A. She was in room 214 of the hospital, and she was in bed at the time.

Q. Who was there at the time you saw her; who was there besides Mrs. Just and yourself?

A. Miss Dillard.

Q. Who was she?

A. She was a special nurse in the daytime.

733 Q. Well, when you first went into the room will you tell us whether she was sleeping or not?

A. She wasn't sleeping. As I recall her back was toward me when I walked in the door.

Q. After you got in a position where you could see her face did you observe whether she was sleeping?

A. She had her eyes closed, and she opened her eyes and sat half way up in bed and looked at me and said, "Come here, you handsome devil"; either devil or brute, something like that, and then she grabbed me by the arm and the necktie and tried to pull me down in bed with her; she swung her body out so that her legs were

over the edge of the bed and tried to pull me down on top of her.

Q. Did you do anything when she did that?

A. I pulled her hands and arms away and the nurse helped me to put her in bed, and she persisted in getting up and held to me.

Q. Did you talk to her with regard to her actions?

A. No. I told her to stop it and to lie down and be quiet.

Q. How long were you in the room during which this was going on?

A. I wasn't in there over two or three minutes; at the most four minutes.

Q. When you left did you leave with anybody?

A. Miss Dillard came outside of the door with me and she closed the door behind us.

Q. As you were leaving did Mrs. Just say anything to you?

A. She didn't want me to leave; she made
734 some remark about me and said that she would like that I stay there.

Q. Did you notice any difficulty in the manner in which she talked?

A. No, sir.

Mr. Parmer:

That is all.

Cross Examination.

By Mr. Mershon:

Q. Doctor, you say this was the second day that Mrs. Just was in the hospital?

A. I don't recall whether it was the second or the third day.

Q. Had anything of that sort ever happened to you before in hospitals where patients were abnormal and out of their heads and minds?

Mr. Parmer:

I object to the phraseology of the question—"out of their heads and out of their minds".

The Court:

It is cross examination. The motion will be denied.

A. One similar case about four or five years ago happened in a Chicago hospital, but it wasn't of that physical nature at all.

Q. Was it a case where a patient undertook to have personal contact with you?

A. Well, I don't know whether you could infer it as such. This other woman had come into the hospital and I was taking the history and she insisted that I come closer to the bed and sit on the bed or she would scream or jump out of the window.

Q. What did you do then?

735 A. I came closer to the bed and put on the bed-light that they have in hospitals, and the nurse fortunately came in at the time.

Q. The nurse wasn't present on that occasion in Chicago?

A. No.

Q. But in this case Miss Dillard was actually in the room?

A. At all times that I was there, yes.

Q. You knew that Mrs. Just was a patient, did you not?

A. Yes, sir.

Q. You had seen her come in or knew when she was brought into the hospital?

A. Yes.

Q. You had familiarized yourself at least in a general way to know from what ailments she was suffering?

A. I didn't take a history or do a physical examination but I was present and discussed the thing with Dr. Howell when he brought her in.

Q. Had you read over Dr. Howell's written diagnosis on the records of the hospital?

A. Well, I was there when he wrote it down.

Q. What was the occasion of you going in to visit Mrs. Just?

A. Dr. Howell, whenever he brings a patient in, as a general rule says to drop in and see them; and it is one of the duties of the House Physician or House Surgeon to more or less see how everyone is getting along, and you do make rounds and go to see different patients.

Q. What time of the day was this, if you recall?

A. I don't recall whether it was in the morning or in the afternoon but it was daylight.

Q. It was daylight?

A. Yes, sir.

Q. A thing of that sort never had happened to you before in your career except the one incident in Chicago. Do you mean to say that you can't now remember whether it was the first, second or third day that Mrs. Just was in that hospital?

A. No, sir, because as a general rule they run all the way from 40 to 150 patients, and thousands come in and out, so it is not clear to me what day it was.

Q. Were you aware, doctor, that Mrs. Just had come into the hospital on the afternoon of March 2, 1936?

A. I do not exactly know the dates, but I know that she was there.

Q. Can you, by referring to this hospital record, tell when Mrs. Just was admitted to the hospital?

A. March 2, 1936. That is the form they use at the St. Francis. Here is another way of telling it, too: "March 3rd—Urinalysis"—

Q. Did you after that happened make any investigation of the record of Mrs. Just's illness as kept in the hospital to ascertain something about her mental condition?

A. No, sir. I personally thought that she was making fun of me; that was my attitude toward it, because she laughed during the procedure, but she was clear and outspoken and I wasn't at all pleased with it, and I told the nurse so.

Q. Don't you know as a matter of fact that
737 the hospital record on that very date, March 4, 1936, as initialed by her attending physician, Dr. Howell, says this: "Patient feels very good; talks freely, however is apparently mentally cloudy yet"?

A. I haven't seen that, sir; I didn't read it at all.

Q. You do find that in the record?

A. Yes.

Q. You made no effort on that occasion to go into or consider her mental condition?

A. No, sir; that wasn't my duty.

Q. Was that incident of such significance that you deemed it proper to make a notation of it in the record of her case?

A. Dr. Howell was informed about it or was told about it.

Q. When?

A. When he came to visit her the next day.

Q. He didn't come to visit her that day after this happened?

A. I didn't see him that day, as I recall. I told him of the incident, however, and it was more or less of a laughable matter.

Q. Did you continue then, doctor, in the absence of Dr. Howell, to call in on Mrs. Just and see her after that?

A. I looked in one other time and her back was turned, and she was apparently sleeping, because Miss Dillard put her finger up to her mouth more or less to quiet me down, and I closed the door and didn't see her and she didn't see me.

Q. You say on this particular occasion Miss Dillard was in the room and Mrs. Just's back was toward you as you came in?

A. Yes, because I walked around to the south side, and her back was to the north, and the door was to the north—

Q. What did you say about Mrs. Just's eyes when you walked around and viewed her face?

A. They were closed at the time, and she opened them and looked and peered at me. I was standing at the side of the bed.

Q. Her eyes were closed?

A. Yes.

Q. How were you dressed on that occasion, doctor, when you went into Mrs. Just's room?

A. I don't recall. I know that I had a tie and a shirt on, because she grabbed hold of my sleeve and my arm and my tie.

Q. Was it customary for you to wear any type of uniform, white trousers or otherwise, while you were on duty in the hospital?

A. No; you could wear anything you wished; either scrub-suits that you use in surgery or your own light clothes or your own street clothes.

Q. You don't recall how you were dressed other than the fact that you were in your shirt-sleeves and had on a tie?

A. I had on a tie; I know that.

Q. Doctor, I asked you and I do not believe you answered it fully or at all: Did you make any report of this incident to the staff? By that I mean the persons in charge of the St. Francis Hospital.

A. No, sir; nothing was reported about that
739 whatsoever.

Q. Never was reported?

A. No, sir.

Q. You didn't deem it of sufficient importance to report it to the staff or those in charge of the hospital?

A. No, sir, because it wasn't a case where the individual had any dire illness or they expected death or anything like that; it was an incident to me that was wholly one that she was making fun of me more than anything else.

Q. As a matter of fact, doctor, isn't it a well known fact that patients in hospitals who are suffering from some mental derangement may do most anything which they would not ordinarily and normally do?

A. Yes, sir.

Mr. Mershon:

That is all.

Re-Direct Examination.

By Dr. Parmer:

Q. Doctor, at the time of your encounter with Mrs. Just as you described it, did you observe any mental cloudiness on her part at that time?

A. Not at that time; no, sir.

Q. Did you observe anything about her conduct or attitude which indicated to you that what she was doing would proceed from an unsound mind?

A. Well, at that time it didn't seem so; no, sir.

Mr. Parmer:
That is all.

740

Re-Cross Examination.

By Mr. Mershon:

Q. Doctor, when this first happened it came as rather a shock to you, didn't it?

A. Well, it was embarrassing to say the least.

Q. Wasn't it a shock and a surprise?

A. A surprise, yes.

Q. And the personal element in it was very embarrassing to you, wasn't it?

A. Yes, sir.

Q. Now looking at it in the retrospect as a physician and regarding Mrs. Just as a patient who had come into the hospital, as its own records show, suffering from carbon monoxide poisoning, in a semi-conscious condition, and considering that this was the second or third day she was there, and considering that Dr. Howell, who had previously seen her on this day, had written on her record that she was "apparently mentally cloudy yet",—as a physician, leaving out the personal element, isn't it entirely possible that what happened might be explained by her illness and its effect upon her?

A. Well, that is rather hard to say. Dr. Howell when he treated her didn't consider it carbon monoxide poisoning.

Q. He wrote it on the record?

A. Yes, sir.

Q. Now I am asking you as a doctor to consider that it was carbon monoxide poisoning that she was suffering from; and considering that Dr. Howell was honest when he said that she was mentally vague just before you went into that room, couldn't what she did logically be explained as a result of her illness?

A. Well, it could be.

Re-Direct Examination.

By Mr. Parmer:

Q. You testified that Dr. Howell did not think it was carbon monoxide.

Mr. Mershon:

We move first to strike his statement as to what Dr. Howell considered her condition to be. He is not competent to testify as to what Dr. Howell had in his mind at the time he treated this patient in the hospital.

Mr. Parmer:

But he is competent to testify with regard to what Dr. Howell told him as distinguished from—

Mr. Mershon:

There is not an iota of testimony in this record as to what Dr. Howell told him regarding Dr. Howell's diagnosis of this case, and any attempt to bring in statements of Dr. Howell at this time would be improper re-direct examination.

Mr. Parmer:

I beg to differ. There is testimony by this witness which we have just heard in which he said, when Mr. Mershon asked him to consider only what was in the hospital, the witness found difficulty in answering the question because he said Dr. Howell's real opinion was different.

Mr. Mershon:

The witness volunteered that information to evade answering the question which was put to him, if Your Honor please.

742 Mr. Parmer:

But the answer was finally gotten from the witness without any motion to strike that testimony, and since there was consent to it I think I am allowed to examine him further with regard to—

Mr. Mehrtens:

There is a motion at the present time to strike that portion of the testimony.

Mr. Parmer:

The motion comes too late.

The Court:

The testimony is hearsay, and considering all of the circumstances I think the hearsay doctrine should apply, so I will sustain the objection and grant the motion to strike the witness' testimony as to what was stated personally by Dr. Howell to the witness.

(By Mr. Parmer):

Q. Doctor, in order to arrive at an opinion with regard to whether the physical conduct of Mrs. Just was in any way due to her mental condition, would you have to know what Dr. Howell meant by using the phrase "mental cloudiness"?

A. All of those terms are as vague as neuralgia or headaches. You know, sir, that in medicine everything goes on its individual case, and as I stated before—may I go ahead?

Q. Yes.

A. As I stated before, I felt that it was more or less as a sport and that the whole thing was at my expense, and I told Miss Dillard that at the time, and Miss Dillard laughed, and I told her to go back in the room, for I didn't think she should leave her—just as a matter of keeping her company. Now the gentleman over here (Mr.

Mershon) asked me to consider all cases—asked me if I considered that as an act of incompetency, due to the fact that he felt—may I add Dr. Howell's words—

Q. I don't think you can do that.

743 The Court:

No, I do not think you can do that.

(By Mr. Parmer):

Q. Anyway, doctor, you had an idea of your own.

A. There was doubt whether or not the diagnosis was as stated on the record to be such.

Q. What I want to know is about this mental cloudiness. Does that necessarily mean an insanity?

A. To my mind it does not, sir.

Q. Now if you knew that when Dr. Howell used that term of mental cloudiness he was referring to either the refusal or inability of the patient to remember certain events and only that, would you have any basis in this hospital record for coming to the conclusion that Mrs. Just's actions were the products of a disordered mind?

A. No, sir.

Q. That is all.

Re-Cross Examination.

By Mr. Mershon:

Q. So, doctor, you told Miss Dillard that she had better go back and stay with the patient?

A. I told her to go back in the room and stay with the patient.

Q. You thought the patient's condition was such that she needed Miss Dillard with her?

A. I felt that she better go back in there or she might get up and do anything she wanted to.

Q. When patients are suffering from delusions or hallucinations incident to their illness, they do get up and walk around and do strange things, do they not?

A. Yes, sir.

By Mr. Mayne:

Q. Were you subpoenaed here?

A. No, sir.

Q. You came down here voluntarily?

A. Yes.

Q. At whose request.

A. I got in town a week ago last night and called my secretary and she said that Dr. Howell called me, and then I spoke to Dr. Howell and he said that Mr. Parmer and Mr. Coleman would like to get in touch with me, so I called them.

Q. Have you spoken to them about this matter?

A. I saw Mr. Parmer about three or four days ago for about 15 minutes and he asked me what I knew about it and I told him what I have told you.

Q. You came down here voluntarily without any subpoena?

A. Yes, sir.

By Mr. Parmer:

Q. Were you interviewed with regard to this matter sometime before I saw you?

A. Mr. Coleman came to my office about a year ago and he spent about two or three minutes there; I was in a hurry to go out on a call and I hurriedly told him what I remembered of the case and that was all.

Q. Did you tell him all the circumstances that you related on the stand today?

A. Partially. I told Dr. Howell the same thing at that time.

By Mr. Mershon:

Q. Do you know where Miss Dillard is now?

A. I understand that she is in Tye River near Lynchburg, Virginia.

Mr. Parmer:

I will tell you where she is if you want to know.

Mr. Mershon:

Yes.

746 Thereupon DAVID HENRY MULLER (Colored) was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. What is your full name, Mr. Muller?

A. David Henry Müller.

Q. Where do you live?

A. In Fort Meyers.

Q. What do you work at?

A. I works on boats.

Q. Now were you formerly working on the Friendship II, Mr. Yeiser's boat?

A. Yes, sir.

Q. Prior to the time these ladies were found in their bunks on that morning when you came back to Miami, how long had you been working on the boat?

A. Well, I had been working there before they bought this boat, but prior to that time—I think I started around about the 1st of February.

Q. Were you on the boat when the party left Miami on this voyage that we are concerned with here in this case?

A. I was.

Q. And what was your particular job on that boat?

A. Steward.

Q. What did you have to do as steward?

747 A. I waited on the table, served drinks and waited on them in any way they asked along the line of service.

The Court:

Did you cook, too?

A. No, there was another young man for that.

(By Mr. Parmer):

Q. Who made up the beds?

A. I did.

Q. All of the beds?

A. Yes, sir.

Q. On that trip will you tell us how the various staterooms were occupied?

Mr. Mershon:

We object to the question as being too general.

Mr. Parmer:

I will withdraw it.

Q. Tell me, Mr. Muller, during that trip did the four people occupy the same berths throughout, the same rooms throughout, or did they change around?

A. The ladies had the two berths in the aft-room.

Q. What room did Mr. Yeiser have?

A. He had the room there on the port side, a little small room on the port side.

Q. Did the members of the party keep these rooms during the entire trip?

A. Yes, they *keeped* those same rooms.

Q. And you had to make up the beds?

A. Yes, sir.

748 Q. Now you left Miami, I think, on Friday, was it?

A. Friday afternoon, yes.

Q. Now did you serve any liquor during that trip?

A. I did.

Q. Tell us when after leaving Miami you served your first liquor?

A. After leaving Miami I served the first drink up on deck.

Q. To whom did you serve it and what did you serve?

A. Well, Mr. Yeiser had some gin and water, and the ladies and Mr. McKay had some White Rock—Mr. McKay had ginger-ale in his drink.

Q. You remember that, do you?

A. Yes, sir.

Q. Tell us the next time that you remember serving liquor to the party or any of the members of it?

A. I served it at twelve that night; late that night I served it.

Q. Where were they then?

A. They were on the after-deck.

Q. What were they drinking then?

A. They was drinking practically the same, drinking liquor and gin.

Q. When you say "they" who do you mean?

A. The party, all of them that was in the party, Mr. Yeiser, Mr. McKay and also the ladies.

Q. The next day was Saturday; did you serve any drinks that day?

A. I did.

749 Q. Can you remember when you did it and to whom?

A. I served them with drinks a little before lunch, and Mr. Yeiser had me to bring him some tomato juice. Then Mr. Yeiser went into his room and he called me and I served him his drink there, and I served the ladies and also Mr. McKay a drink.

Q. On Friday night did you serve Mr. Yeiser any liquor beyond what you have already mentioned?

A. Yes, sir.

Q. Did you serve him some liquor beyond what you have already mentioned?

A. Yes, sir.

Q. And where did you serve that to him?

A. In his room.

Q. Who was in the room at the time?

A. One of the ladies; I don't know which one it was.

Q. Can you describe her?

A. I don't know whether it was Mrs. Just or Miss Grunow; I couldn't say which one it was, but it was one of them.

Q. Let's see if we can bring it back to your mind. Do you recall that after you came back to Miami that one of the women went to the hospital?

A. Yes.

Q. And that one of the women stayed on the ship?

A. Yes, sir.

750 Q. Now which of those women was it that was in the room that night when you served Mr. Yeiser?

A. The one that didn't go to the hospital.

Q. That is the one?

A. Yes, sir.

Q. Did you serve her any liquor at that time?

A. No, sir, I didn't serve her any at that time.

Q. Did you notice how she was dressed?

A. Yes.

Q. How?

A. She just had on a gown.

Q. When you say "gown" what do you mean?

A. Night-gown; she was dressed that night for bed.

Q. How was Mr. Yeiser dressed?

A. He had on his clothes, then he had on his trousers and shirt, but he had his shirt open.

Q. What time was this?

A. It was somewhere between eleven-thirty and twelve o'clock midnight.

Q. On the next day did you serve Mr. Yeiser any drinks in the morning?

A. Yes, sir.

Q. At what time did you serve him drinks?

A. Early; he goes and rang the bell right after he got up; I hadn't gotten up yet before he rings the bell, and he asked me to bring him a drink.

Q. What kind of liquor did you bring him?

751 A. Gin and water.

Q. Was he alone at that time?

A. No, sir—yes, he was alone at first.

Q. Now later on when you were next in the room did you see anybody there then?

A. Yes.

Q. Who did you see?

A. I saw this same lady.

Q. How was she dressed at that time?

A. She was dressed in her gown, the same as she was the first part of the night.

Q. Did you serve her any drinks at that time?

A. No, I didn't serve her any at that time.

Q. Now during Saturday, the remainder of Saturday, did you serve any liquor to Mr. Yeiser or to any of the guests?

A. Yes, sir.

Q. To whom, what and how much?

A. I served Mr. Yeiser before lunch and the ladies asked me to bring them some White Rock and cracked ice in their room.

Q. Did you do that?

A. I did.

Q. How long before lunch did that occur?

A. That was I guess around about 30 minutes before lunch.

Q. When you say you brought them some cracked ice, do you mean you brought them only—

A. White Rock and cracked ice and some
752 empty glasses; that's all.

Q. In order to deliver that cracked ice and White Rock did you go into the room or did you stay outside?

A. I went to the room door and knocked and they went into the bathroom and hollered for me to come in; they closed the bathroom door and asked me to set it on the dresser there.

Q. What did you see on the dresser?

A. There was a pint of liquor sitting on the dresser.

Q. What color liquor was it?

A. It was red; some kind of rye whiskey.

Q. Do you know whether it was rye whiskey or rum?

A. No, sir.

Q. But it was red liquor?

A. Yes, it was red liquor.

Q. Well, during the remainder of the day did you serve anybody with any more liquor?

A. I did.

Q. Tell us who and when it occurred?

A. I served Mr. Yeiser that evening, and Mr. McKay he went in the ladies' room; I guess he went there to get a drink of something.

Mr. Mershon:

I move to strike that.

The Court:

The motion is granted.

Q. You didn't see what Mr. McKay did, did you?

A. No, sir, I didn't.

Q. I want you to tell us what you know from having seen it. Tell us if you served Mr. McKay any that day?

A. I did.

753 Q. When did you serve it to him?

A. I served it to Mr. McKay first a little before dinner that night.

Q. What did you serve him?

A. He had a little gin with ginger ale in it.

Q. During the balance of the evening did you serve any more liquor that you remember?

A. No, sir.

Q. Now on Sunday, in the morning, did you serve Mr. Yeiser any liquor?

A. Yes, sir.

Q. When?

A. Early Sunday morning.

Q. Whereabouts was he then?

A. He was in his room.

Q. What did you serve him?

A. Gin and water.

Q. In order to serve that did you go into the room?

A. Yes, sir.

Q. Was anybody in the room at the time?

A. No, sir.

Q. Did you return to the room at any time later in the morning and find someone there?

A. I returned to the room but I didn't find anyone there.

754 Q. Well, now tell us what drinks, if any, you served on Sunday to any members of the party and tell us which members of the party you served them to?

A. Well, I served them all a drink Sunday; Mr. Yeiser and Mr. McKay and the two ladies also.

Q. And when did that occur?

A. That occurred just a little before lunch.

Q. When did you serve any more, if you did; just go on and tell us.

A. I served some more that evening late after they came off the fishing trip.

Q. Where were they then?

A. They were up on the after-deck.

Q. At dinner did you serve anything?

A. I didn't serve any liquor but I served some champagne.

Q. How many bottles of that did you serve?

A. Well we had two bottles but only used one.

Q. Where was the liquor kept; where was the supply of liquor kept that you used?

A. In the pantry.

Q. On what deck is that?

A. That is in the galley there by the engine-room on the first floor.

Q. Did you have an ice-box on board the ship?

A. Yes.

Q. Where was that located?

A. The ice-box, the big one, was right there
755 by the "Chief" and the small one was right below the dining-room door.

Q. When you say drinks what do you mean?

A. Ginger ale, White Rock and champagne.

Q. Well during the time you were on the ship did you see any members of the party visiting the pantry?

A. Yes.

Q. Who did you see?

A. I seen the ladies there at the pantry.

Q. Did you see what they did when they got there?

A. They had glasses there and they had a bottle of ginger ale or a bottle of ginger ale, but I walked on back and I did not notice just what they were doing.

Q. You could get ice in that ice box, could you?

A. Yes, sir.

Q. After you served dinner and washed up did you serve the party any more drinks?

A. Monday morning.

Q. I mean on Sunday night after you served the dinner, when you served the champagne, and after you had washed up the dishes,—did you serve the party any more liquor that night?

A. I did.

Q. What time?

A. That night I guess somewhere around between nine and ten o'clock.

Q. Where were they then?

A. That was on the after deck.

Q. What were they doing?

756 A. Sitting back or laying back on the seat, and they had some horse-blankets around them; it was pretty cool that evening.

Q. What drink did you serve them?

A. Gin.

Q. Did you serve them any more drinks that night?

A. No, sir, I didn't.

Q. Now the next morning did you receive word from someone that the two ladies couldn't get up?

A. Well, Mr. McKay he rang the bell and as I went to answer the bell I met him in the hallway and he said to tell the captain to come there.

Q. Did you do that?

A. I did.

Q. Did you go down to where the ladies were?

A. The Captain called me and I went in there and he wanted me to assist him in bringing the ladies out of the room.

Q. Did you assist?

A. Yes, sir.

Q. Tell us what you did in assisting him.

A. Well, Mr. McKay he got her kind of around her shoulders and the captain kind of had her around her body and I held her kind of by the knee.

Q. Are you describing the bringing out of just one of the ladies or did you help bring both of the ladies out?

A. I helped bring both ladies out.

Q. Is that the way you did in bringing both
757 of them out?

A. Yes, sir.

Q. Now did you observe the condition of the bed that the two ladies were moved from?

A. Yes.

Q. Can you tell us in what condition it was?

A. It was wet.

Q. It was what?

A. Wet.

Q. When you say "wet", do you mean wet or damp?

A. Well, it was wet.

Q. How wet was it?

A. Well, I had to straighten up the bed and I noticed it was wet; I had to turn the mattress up so that it could air and dry.

Q. When you went into this room did you notice any peculiar odor or note anything about the atmosphere—

Mr. Mershon:

That is objected to as leading.

Mr. Parmer:

I will withdraw it.

Q. Well, did you notice anything about the atmosphere when you were in the room?

A. I didn't detect anything.

Mr. Mershon:

Did you see anything or did you detect any odor?

A. I didn't detect any odor I should have said; that is what I meant to say.

758 (By Mr. Parmer):

Q. Where did you bring the ladies?

A. One we put there in Mr. Yeiser's room up on deck and the other lady we laid her out on the after deck.

Q. What did you do then?

A: They asked me to bring something for the lady to vomit in and pretty soon she started to vomit.

Q. Did you bring something for her to vomit in?

A. Yes, sir.

Q. Who helped her—

A. A little short white nurse on the boat there; I can't think of her name now, but it was the day nurse.

Q. This happened after you got into port?

A. Yes, sir.

Q. I want to know what you did during the remainder of the trip after the girls were brought up on deck until the vessel arrived and docked in Miami?

A. Well, I was just there waiting on folks. Mr. Yeiser called me and asked me to give him a towel. I gave him the towel and went back down to the galley and pretty soon he rang the bell again for me to bring him a drink, and I goes in the room, and the lady was in the room and she said, "Is that for Mr. Yeiser", and I said, "Yes, 'mam'," and she says, "Don't give him any more", and I says, "I can't help it; he asked for it", and she said, "Yes, but don't give it to him".

Q. What was his condition at that time?

A. Mr. Yeiser?

759 Q. Yes.

A. Well, he was drinking—drunk—just like he always was; he was just drunk; he couldn't walk either without holding on to something; when he couldn't get anything to lean against then he would catch hold of the upholstering of the boat and then walk along. When there wasn't any railing on the side that is the way he got around, got about.

Q. Is that the way he was that morning?

A. Yes, sir.

Q. Did you see the lady who was out on the open deck again before the boat came into Miami?

A. Yes, sir.

Q. Did you do anything for her?

A. No, sir.

Q. You just saw her there?

A. Yes, sir.

Q. What was she doing?

A. She wasn't doing anything, just laying there.

Mr. Parmer:

I think that is all.

Cross Examination.

By Mr. Mershon:

Q. What did you say your name was?

A. David Henry Muller.

Q. Muller?

A. Yes, sir.

Q. David, how long have you or had you
760 been working for Captain Roberts?

A. I have been working with Captain Roberts about eight years.

Q. Did you work with him on his own boat, when he had the boat that he chartered?

A. Yes, sir.

Q. Did you work with him when he had the old Friendship I that he chartered to Mr. Yeiser?

A. Yes, sir.

Q. Did you work with him when he was Captain for Mr. Yeiser on the old Friendship I?

A. Yes, sir.

Q. As a matter of fact, you had been his steward for about 8 years?

A. About eight years, but Mr. Yeiser he would sometimes bring his chauffeur down as a valet and sometimes he would use his chauffeur, but they would take him out on the trips with them.

Q. He is the boy they call Arizona?

A. Arizona Phillips was his name; he was the chauffeur.

Q. Do you remember whether Arizona was on this particular trip?

A. No, he wasn't.

Q. About where was the boat when Mr. McKay rang for you and you went up and told the Captain to come down; did you notice what part of the shore you were opposite at that time?

A. I figured that we was about half way from 761 where we left from that morning early, about half way in to the dock.

Q. How long did the ladies stay up there on deck until they got into dock?

A. They stayed up there I guess pretty near on to an hour or three-quarters of an hour.

Q. Are you just guessing or do you have anything to remember it by?

A. No, sir, I don't have anything to remember it by. It has been a pretty good while ago, but my notion—

Q. You said Mr. Yeiser was drunk on the morning as he most always was? Was he nearly always in that condition?

A. Yes, sir.

Q. His being drunk affected his feet and legs more than it did his mind?

A. Yes.

Q. His mind was pretty clear, wasn't it?

A. That's right.

Q. Even when you call him drunk his mind was all right; he knew what he was doing?

A. Yes, sir.

Q. Now you said a whole lot about serving drinks to Mr. Yeiser. You served him a whole lot more liquor on that trip than you did to any of the guests?

A. Yes, sir.

Q. And you served him separately from them lots of times?

A. Yes, sir.

Q. Now what time in the morning was it, if
762 you recall, that Mr. McKay buzzed for you this Monday morning?

A. To the nearest of my recollection it was somewhere around eight o'clock.

Q. Was the sun up?

A. Yes, sir.

Q. Daylight?

A. Yes, sir.

Q. Had you gotten up before that?

A. Yes.

Q. You had not given Mr. Yeiser his usual morning drink before that, had you?

A. Yes, I had.

Q. Mr. McKay told you to call Mr. Yeiser?

A. No, he didn't tell me to call Mr. Yeiser.

Q. Who did he tell you to call?

A. Captain Roberts.

Q. Wasn't Mr. Yeiser down there when the Captain came there; wasn't Mr. Yeiser in the stateroom with Mr. McKay?

A. No, sir, Mr. Yeiser wasn't in there at first; I went in there and pretty soon I came back out and then I went back and Mr. McKay went in there. He called for me and then as I was answering he met me in the hallway and he told me to tell the Captain to come there.

Q. Mr. Yeiser had already been in the stateroom?

A. Yes, sir.

Q. Do you know who called him down there?

763 A. No, sir.

Q. If Mr. McKay says he called Mr. Yeiser and Mr. Yeiser came down and went into the stateroom, you would not know any different, would you?

A. No.

Q. David, what makes you think that Mr. Yeiser was in the stateroom before you went in there; did you see him?

A. Yes, sir.

Q. What was he doing when you saw him?

A. He just was walking along singing. He came straight by me and walked on back in the dining salon.

Q. He was walking along singing?

A. Yes, sir.

Q. How long was that before Mr. McKay called you?

A. That was I guess around 15 minutes, 12 or 15 minutes.

Q. Before Mr. McKay called you had Mr. Yeiser walked back from the after-stateroom toward where you were in the dining-room?

A. I didn't see him when he came out of the room, but when I heard him he was singing up on the deck salon.

Q. You say you saw him go back into the after-stateroom?

A. Yes.

Q. And the next thing you knew you heard him singing on the deck upstairs?

A. Yes, sir.

Q. Was it while he was singing up there that Mr. McKay called you?

A. Directly after he ceased singing. That wasn't while he was singing; it was a little later that the bell rang for me.

Q. And Mr. McKay told you to get the Captain?

A. Yes, sir.

Q. You spoke about these beds being wet; how much of the bed was it?

A. It was a round place in there; I guess it was somewhere about this long and about this wide (indicating).

Q. Well, how long would you say in feet that was?

A. I guess it was around about two feet.

Q. And how wide?

A. About a foot and three-quarters.

Q. Were both beds wet?

A. Yes, sir.

Q. Along about the same places?

A. The same places.

Q. You say Mr. Yeiser was up on the upper after deck when the ladies were brought up?

A. No, sir; I don't remember him being up on the after-deck; they were all back there in the room with the ladies when they called for us to come back there—Mr. Yeiser and Mr. McKay. I don't know how Mr. Yeiser got back there, but Mr. McKay didn't tell me to call him; he told me to call the Captain, get the Captain.

Q. After you brought the ladies up out of
765 the cabin and you put one of them in Mr. Yeiser's big stateroom upstairs and one of them on the couch on the deck of the boat upstairs, where was Mr. Yeiser?

A. He was going from one to the other; he would look after one for a while and then he would come along and look after the other.

Q. Except for the little difficulty in walking he knew what was going on, did he?

A. Yes, sir.

Q. You say you were in the young ladies' cabin on one occasion and you say you saw a pint bottle of red liquor?

A. Yes.

Q. Could that have been brandy?

A. It could have been brandy; I didn't pay so much attention to it, but it was some kind of liquor sitting there on the dresser.

Q. Was it a full un-opened bottle?

A. No, it was used, and I would say about two or two and a half inches down was missing out of it.

Q. Isn't it true that that was a half pint bottle or pocket size?

A. No, it was a full pint bottle.

Q. Can you get a pint in your hip-pocket?

766 A. You can if it is a pretty big-sized pocket.

I have gotten a pint in my pocket but I guess I have a pretty good size hip-pocket.

Q. Now on this Sunday evening, David, I believe you say you served one quart of champagne at dinner in the dining-room, is that right?

A. Yes, sir.

Q. And later in the evening, between nine and ten, you served some drinks to the guests on the after deck?

A. Yes.

Q. And you served no more that evening to the guests?

A. No, sir.

Q. What were the guests doing when you served them on the after-deck between nine and ten that evening?

A. They were sitting back out there with horse-blankets on them, kind of laying back on the seats, and I put the light out and went on back, but pretty soon the bell rang again and I came back up, and one of the ladies said that burning the light in the deck salon was bothering them.

Q. How much later was that after the time you had left them?

A. That was somewhere around eleven o'clock.

Q. Where were your quarters; where did you sleep on the boat. I call your attention to this floor plan of the boat and ask you to point out your quarters; were they on the cabin deck or main deck or down near the engine-room up in the bow of the boat?

Q. That is on the lower cabin deck?

767

A. Yes, sir.

Q. Did you get any other calls that night from Mr. Yeiser or the guests—that Sunday night after you went up at eleven o'clock and turned out the lights?

A. No, I didn't get no more calls.

Q. How long did they stay up there on that after-deck before they retired, if you know?

A. I don't know.

Q. David, was it warm or was it pretty cool, down on the Keys on that trip from February 28th to March 2, 1936?

A. It was pretty cool; that kind of like a northwest wind; it wasn't cold but the wind was blowing rather strong, which made it pretty cool.

Q. Were you wearing your sweater?

A. No, sir, a white jacket.

Q. A jacket over your regular shirt and undershirt?

A. Yes, sir.

Q. You didn't stay out on deck much, did you?

A. No, sir.

Q. Would you have regarded it as most too cool to fool around the deck in your shirt sleeves?

A. Well, it was late in the afternoon and early morning.

Q. Now you talked about seeing Miss Grunow in Mr. Yeiser's room on the second trip you made there in the morning, on one or two occasions. Do you remember that?

A. Yes, sir.

768

Q. You said she was dressed in her night-gown. Do you mean that she was dressed in very thin clothes or garments, or do you mean that she had on a bathrobe or something of that sort?

A. No, just a one-piece night-gown.

Q. What color was it?

A. Kind of pink.

Q. Did it have any trimmings on it?

A. Yes, sir.

Q. Where were they?

A. Around the collar.

Q. Was it fur, feathers or something of that sort?

A. No, it had some lace.

Q. Did you see a bathrobe or dressing-gown in Mr. Yeiser's room?

A. No, I didn't.

Q. You say you saw her in there on your second trip; was that Saturday morning?

A. Yes.

Q. That was after you had already made the first trip and had served Mr. Yeiser?

A. Yes, sir.

Q. What would you say about Sunday morning?

A. Sunday morning I served Mr. Yeiser.

Q. Did you see her in there Sunday morning?

A. Sunday morning I think it was instead of
769 Saturday morning.

Q. What time of the day was that?

A. Early that morning.

Q. What do you call early?

A. Before seven o'clock.

Q. It was seven o'clock when you saw her there?

A. A little before seven.

Q. When had Mr. Yeiser waked up and rang for you to bring his drink?

A. About 6:30.

Q. It was after that when you saw her?

A. No, sir.

Q. You did not see her there on the first trip?

A. No, sir.

Q. You didn't see her there when you first went to Mr. Yeiser with his first drink?

A. No, sir.

Q. What time did they serve breakfast on the boat Saturday morning?

A. I couldn't tell you exactly what time it was, but it was mostly after they all got up before I served breakfast.

Q. You remember these things pretty well. See if you cannot figure out by something about what time that they had breakfast on that Saturday morning?

A. It was somewhere between eight and nine o'clock as best I remember.

Q. Breakfast was served in the dining salon?

770. A. No, it was served up on deck.

Q. How about Sunday morning; did you serve breakfast earlier or later than you did on Saturday morning?

A. Sunday morning I served breakfast between eight and nine o'clock.

Q. About the same time?

A. Yes, sir.

Q. Was that the regular time when Mr. Yeiser usually had his breakfast?

A. No, sir.

Q. What time did he usually eat?

A. Sometimes it would be early and sometimes late; he had no special time; he usually got up about ten o'clock and then would eat.

Q. Did you serve him on deck or in his cabin?

A. On deck.

Q. What time did you serve Captain Roberts and Chief Blount on Saturday morning?

A. The chef-cook looked after that.

Q. You did not serve them at all?

A. No, sir.

Q. Who have you been working for since Mr. Yeiser's death?

A. Captain Eddie Johnson; he is on the Yacht Ne-panthe.

Q. Is that yacht over in Fort Meyers?

A. Yes, sir.

Q. Is that a charter boat?

A. Yes.

771 Q. Does it belong to him?

A. Yes, he is the owner.

Q. You have not worked for Captain Roberts since you took the Friendship II back over to Fort Meyers?

A. Yes, sir. When I am in Fort Meyers and not busy I clean house for Mrs. Roberts on Saturdays, and I works on Captain Roberts' boat at times; I worked about three weeks last December on his boat.

Q. Did you serve coffee to the guests or to Mr. Yeiser before you served breakfast?

A. I served coffee to Mr. Yeiser.

Q. You didn't serve it to the guests?

A. No, sir.

Q. Had Mr. Yeiser been accustomed to entertaining guests on board the Friendship II?

A. Yes, sir.

Q. He was away for a short time during the Christmas holidays when his former wife and his children were aboard?

A. Yes.

Q. As a matter of fact there was quite a lot of company aboard the boat all of the time?

A. Yes, there was a pretty good crowd.

Q. Liquor was considered and regarded as a part of the ship's stores, and they always served liquor to guests that came aboard?

A. Yes, sir.

772 Q. Were you cat-in-boy or steward in September, 1935, when Mr. Yeiser came aboard?

A. No, sir; I just helped clean up the boat.

Q. You didn't go on the trip where the boys were overcome by this gas?

A. No, sir.

Q. Were you aboard on one occasion when Chief Blount and Captain Johnson, the fishing guide, were

overcome by some gas while they were on the back of the boat?

A. No, sir.

Q. You never heard anything about that?

A. No, sir.

Q. How often did you go back in the guest quarters to clean up?

A. Very often in the morning, especially when they left out of their rooms. Sometimes I would go in and get half-way through and someone would call me and then I would have to come back and finish.

Mr. Mershon:

I think that is all.

(Witness excused.)

773 Thereupon CARL H. HILTON was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. What is your full name?

A. Carl H. Hilton.

Q. Where do you live, Mr. Hilton?

A. 64 N. W. 32nd Street, Miami, Florida.

Q. What is your business?

A. Manager of Walker-Skagseth Foodstores, Inc.

Q. Is that located at 56 N. E. First Street, Miami, Florida?

A. Yes, sir.

Q. Now I show you some photostats and ask you if they are photostats of bills issued by that store?

A. Yes, they are.

Q. Now will you tell us what these bills, of which those papers you have in your hand are photostats, were issued for?

A. Various groceries and provisions supplied the yacht Friendship.

Q. Between what dates?

Mr. Mershon:

If Your Honor please, we object to the question because the instruments themselves would be the best evidence of the dates on them, and we further object to any questions concerning these documents because no predicate has been laid for same.

774 Mr. Parmer:

In regard to that I want to inquire whether any objection is being made on the ground that they are photostats?

Mr. Mershon:

No. We object to the introduction of these papers. I assume that you are going to—

The Court:

Let him explain what they are and then hand them to counsel.

(By Mr. Parmer):

Q. Between what dates do they cover supplies sold and delivered on the Friendship II?

A. Between the dates of February 17th and 28th, 1936.

The Court:

Before you go into the details of them submit them to counsel.

Mr. Parmer:

I have done that, Your Honor.

Q. Were the bills from which these photostats were made made in the regular course of your business of running a grocery-store?

A. Yes, sir.

Q. Do they show what you actually sold and delivered to the Friendship?

A. Yes, sir.

Mr. Mershon:

We move to strike that question and answer, if Your Honor please. The witness was asked if these bills show that the goods therein mentioned were sold and delivered to the yacht Friendship II, and the answer was yes—

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Mr. Parmer:

I did not ask that precise question.

The Court:

You might ask him if they show that they were paid for, but the question as now framed is not proper because there is no delivery shown on them.

(By Mr. Parmer):

Q. Then, Mr. Hilton, did you receive payment for the items shown on these sheets?

A. We have received payment in full.

Q. You have?

A. Yes.

The Court:

Who made the payment?

The Witness:

These payments were usually made by check, but I don't remember who signed the check.

Q. But you have no outstanding account with the owners of the Friendship II?

A. No, sir.

The Cou

Now, do you want to renew your objection in the light of—

Mr. Mershon:

When counsel makes the offer I would like to have the privilege of interrogating the witness.

Mr. Parmer:

I want to make an offer of offering these three sheets in evidence.

Mr. Mershon:

Do you make that for any special purpose?

Mr. Parmer:

Yes, to show particularly the purchases on the 26th of February and on February 28th.

Mr. Mershon:

What particular purchases do you offer them to show?

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Mr. Parmer:

Well, on the 26th of February the purchase of 12 quarts of assorted wines at \$27.90, and on February 28th the following purchases: Six tins of Baker's Coconut; one Salad Dressing; 12 celery; one carton of Camels; one carton of Kool Cigarettes; two cases of bottles; one case of orange juice—

Mr. Mayne:

What about the bottles?

Mr. Parmer:

Two cases of bottles, one dollar; one case of coca cola, one case of Pabst Beer, six pounds of shrimp and 12 quarts of assorted wines.

Mr. Mershon:

May I interrogate the witness?

Mr. Parmer:

Yes.

By Mr. Mershon:

Q. Mr. Hilton, when was this so-called bill paid, actually paid to Walker-Skagseth?

A. That will have to be looked up on the books. I don't remember.

Q. Was it on the date of this instrument, March 2nd, 1936?

A. Not necessarily.

Q. As a matter of fact you have no knowledge whatsoever of any of the items shown on this statement?

A. Our bookkeeper made that bill.

Q. You know nothing about either the making of the bill or the delivery of the items referred to in it, do you?

A. No. We never get a receipt for goods delivered to yachts, and that is the way we make our bills.

Q. You have a man in your employ available here in Miami who delivered any articles that might be mentioned herein, any articles which were actually delivered to the yacht Friendship II, don't you?

A. We have several drivers delivering to various yachts.

Q. Do you know which driver made the so-called delivery of these items?

A. We never keep a record of which driver delivers them.

Q. Do you know of your own knowledge that the 12 quarts of assorted wines here shown were actually delivered to the yacht Friendship II on February 26, 1936?

A. Yes, by that bill that certainly were delivered.

Q. I will have the question repeated, and I would like for you to weigh every word of my question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

A. I—

Q. Of your own knowledge.

A. Well, we did business—

The Court:

That is not what he asked you. He asked you a plain question: Do you know of your own knowledge? You can answer that yes or no.

A. By that bill I would say yes.

The Court:

He is not asking you to answer with respect to that bill. He is asking you the plain question whether you know of your own knowledge.

A. I don't remember seeing the goods go out,
778 but I know they did go out.

Q. Did you see them delivered?

A. I didn't see that. Lots of goods go out that I never see.

Q. You do not make deliveries?

A. No, but we can get the driver who made the delivery.

Q. Exactly, and that is the question I asked you awhile ago.

A. We have two drivers that deliver to yachts and it was either one or the other.

Q. Is the same thing that you just stated true regarding the so-called 12 quarts of assorted wines charged under date of February 28, 1936, that is, do you know of your own knowledge by having seen the 12 quarts delivered, 12 quarts of assorted wines delivered, that they were delivered to that yacht on February 28, 1936?

A. I don't remember seeing them go out.

Q. And you can also get the man who did?

A. We can get the driver that will know, because he took it there.

Q. You don't even know what kind of packages these alleged quarts of assorted wines were in, do you?

A. I don't remember seeing them go out.

Q. Now when you fill an order and send packages and merchandise out and deliver it, what sort of memorandum do you send along with it?

A. We send a little sales ticket which is about three inches by six inches.

Q. And that is your original entry of that transaction, is it not?

A. Yes, sir.

Q. And from these original entries subsequently the transactions are posted on your ledger, is that right?

A. That is right but I am not the bookkeeper.

Q. You are the manager?

A. Yes, but I do not have any access to the books.

Q. You have no access to the books?

A. No.

Q. But you know of the system by which your business is run, don't you, as manager?

A. I don't exactly know the bookkeeping system, but I know these charges are posted from the tickets.

Q. To what?

A. To a ledger.

Q. And where then are the tickets from which this combined statement was later made up and sent in the form of a bill to the customer?

A. They were put in our basement and the Fire Department came along and asked us to have that basement cleaned out, so they were all destroyed.

Q. Your original tickets were destroyed?

A. Yes, sir.

Q. Now this thing right here was copied off the ledger, wasn't it?

A. That was copied from the sales' tickets.

780 Q. Did you copy it?

A. No, but the bookkeeper did.

Q. Did you see it copied?

A. I didn't see her copy that individual one.

Q. I am asking you about this one?

A. I don't remember seeing her copy that.

Q. You just said you didn't know much about the bookkeeping system and the way it operated, didn't you?

A. Yes, I don't know about the bookkeeping system.

Q. And you don't know anything about this instrument, do you, of your own knowledge?

A. I know that bill was made from sales tickets and I know the bookkeeper made it.

Q. Did you see her make it from the sales tickets?

A. Not necessarily that one, but she made it anyway.

Q. Didn't you say it was customary to post your sales tickets into your ledger account?

A. Well, I think that is the way it is done.

Q. Isn't a bill such as this copied off of the ledger account?

A. This bill is copied from the sales tickets as far as I understand.

Q. Do you know?

A. Not positively, but I think so.

Q. You say this is not the ledger account as it stands on your ledger of your company?

A. No. I thought I was called up to identify
781 handwriting. I don't know anything about the bookkeeping part of it.

Q. Then in trying to identify this paper here you cannot say, because you do not know, that this paper is correct and represents the account as shown on the ledger of your company?.

A. That is made from our sales tickets and the goods delivered to the yacht Friendship. They were delivered and we can get the driver who delivered them. He is in New York now.

The Court:

Where is this man now?

The Witness:

He is in New York now; he is one of our drivers that delivered to yachts last winter.

(By Mr. Mershon):

Q. Where are the drivers that delivered to these yachts last winter?

A. One is in New York.

Q. What is his name?

A. His name is Herbert Briggs, and the other fellow—I can't think of his name now.

Q. Let that go temporarily. Who purchased the items shown on here under dates of February 26th and February 28th, respectively, 12 quarts of assorted wines?

A. I don't know. I couldn't tell you that.

Q. You don't know whether it was Captain Roberts?

A. I couldn't tell you.

Q. You don't know whether it was Mr. Yeiser?

A. I couldn't tell you that.

Q. And so far as you know, even though
782 these items might have been charged to the
Friendship II and later paid, you cannot say
that these 24 quarts of assorted wines ever got aboard
the yacht Friendship II, can you, as far as you yourself
know?

A. Since that bill was made up by our bookkeeper
evidently it was delivered to the boat.

The Court:

You stated you thought you were called here to identify
handwriting?

The Witness:

Yes, sir.

The Court:

Whose handwriting?

The Witness:

What?

The Court:

Whose handwriting is that?

The Witness:

This was made by Mrs. Itzel, the young lady that took
care of the yacht bills.

The Court:

Where is she now?

The Witness:

She is at the Columbia Market, at the City Hall, New
York City.

The Court:

What position did she hold with your store at that time?

The Witness:

She held the position of billing clerk; she took care of the yacht billing, and naturally she made out all of the bills for the yachts.

The Court:

When goods were sold to different boats did she look after the individual bills?

783 The Witness:

That all went to her, Your Honor, and she made them up into one big bill.

The Court:

Is there anybody there in your institution that does that today who succeeded her?

The Witness:

We have no yacht business today; that is just in the wintertime:

The Court:

Your regular business is all around—all year around business—

The Witness:

Yes.

The Court:

Do you handle that the same way as you did the yacht business?

The Witness:

Yes, sir.

The Court:

Have you got a bookkeeper?

The Witness:

Yes, sir.

The Court:

Does that bookkeeper keep ledgers?

The Witness:

Yes, sir.

The Court:

As I understand, you do not know whether he copies the bill that is sent out to the purchaser from the sales ticket on to the ledger and then the bill is mailed to the purchaser—whether that is copied from the ledger you do not know that?

The Witness:

No, I don't know anything about the bookkeeping.

The Court:

Would your bookkeeper know about that?

The Witness:

Yes, sir.

The Court:

Who is your bookkeeper?

The Witness:

Miss Mary Christian is our bookkeeper.

784 The Court:

Is she available to come up here today?

The Witness:

I think so. I will ask my superior.

The Court:

I think we had better have the bookkeeper. On the present showing the offer is rejected.

(Witness excused.)

785 Thereupon PHILLIP CHARLES NYE was called as a witness in behalf of the Petitioner; and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. What is your full name?

A. Phillip Charles Nye.

Q. Where do you live?

A. Fort Myers, Florida.

Q. What is your general business?

A. Sailor on a yacht.

Q. Were you formerly a sailor on the yacht Friendship II?

A. Yes, sir.

Q. Were you a sailor at the time that vessel put out from Miami on February 28th and returned later on March 2, 1936?

A. Yes, sir.

Q. Do you remember the occasion when two ladies were found in their bunks on the morning of March 2, 1936?

A. Yes, sir.

Q. Did you see them in their bunks?

A. No, sir.

Q. Do you remember what you were doing at the time they were found in their bunks?

A. I was in the pilot-house with the captain.

Q. Did the captain leave the pilot-house at 786 that time?

A. I think the waiter or someone came up and told him that he was wanted and he gave me the wheel.

Q. Now during that trip which began on the 28th of February and ended on March 2nd, did you observe the members of the party from time to time?

A. Yes, I did.

Q. As a sailor on board that yacht where did your work take you?

A. On deck most of the time.

Q. On just one part of the deck or other parts?

A. Well, fore and aft.

Q. Now on Sunday in the evening did you see the members of the party any place?

A. Yes, sir.

Q. What time did you see them and where did you see them?

A. I saw them after they came in from fishing, and then later that night I went back aft to let down the curtains after they had gone into the deck salon.

Q. What time was it that you went back to let down the curtains?

A. I don't know exactly; I think it was around 10:30 or 11:00 o'clock. I don't remember exactly.

Q. What curtains did you have to let down?

A. Back there on the stern; we have awnings on each side to let down to keep the dew and moisture out off the tables and lounge.

Q. Did you actually do that work that night?

787 A. Yes, sir.

Q. You say you saw the party in the "saloon"?

A. They were in the "saloon" at the time I went aft to take care of my chores.

Q. Well now did you observe anything with regard to their actions? Answer that yes or no?

A. Yes, sir.

Q. Well, tell us what you observed, and when I say "observed" that does not mean just what you saw with your eyes but it includes what you heard with your ears as well?

A. When I walk by I don't usually hang around and watch what they are doing, but I did observe that they were drinking and carrying on and having a party.

Q. That is all you observed with regard to them?

A. Yes, sir.

Cross Examination.

By Mr. Mershon:

Q. When did Captain Roberts come back and take the wheel from you after Muller called him to go down in the guest-cabin?

A. About half an hour, if I remember right.

Q. You say that it is customary every night to go down and drop those curtains around the after deck to protect that lounge on the after deck?

A. Yes, sir, that was my duty.

Q. When do you raise them again?

A. In the morning.

Q. After breakfast?

A. Yes.

788 Q. Had you raised them that morning coming up from Featherbed Shoals this Monday morning; had you already raised them at the time these girls were found in their bunks?

A. Yes, sir.

Q. You had already raised them?

A. Yes, sir.

Q. How long had you been up?

A. You mean before I raised the curtains?

Q. Yes; that morning?

A. I don't know how long.

Q. How long—do you know what time you had breakfast that morning?

A. I think we had breakfast before we started.

Q. You had breakfast before you started from Featherbed Shoals?

A. If I remember right.

Q. Do you recall what time it was you started?

A. No. I think it was early, but I don't know the exact time.

Mr. Mershon:

That is all.

Mr. Parmer:

I have no further questions of this witness.

(Witness excused.)

789 Thereupon FRED D. SUMMERS was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. What is your full name?

A. Fred D. Summers.

Q. Where do you live?

A. I lives in Fort Myers; that's where I am living now.

Q. What is your general business?

A. Well, cooking in general.

Q. Were you cook on this yacht Friendship II of Mr. Yeiser's?

A. Yes, sir.

Q. Were you cook on that boat at the time it left Miami on February 28th and returned with these two girls in their bunks?

A. Yes.

Q. You were cook at that time?

A. Yes, I was cooking at that time.

Q. Well now when you were doing your work on that boat where did you stay when you were doing it?

A. I am ordinarily in the pantry and in the kitchen back there.

Q. Did you have any liquor in that pantry?

A. Yes, sir.

Q. Where did you have it?

A. Had it right there on the "dresser".

790 Q. You say on the dresser?

A. Yes, on the dresser.

Q. Did you have an ice box there?

A. Yes, sir.

Q. What did you have in the ice-box?

A. We had ginger ale, some White Rock, and had some champagne at the present time, too.

Q. When you say "at the present time", do you mean at the time of the trip?

A. Yes, the time when the party was on. And my vegetables and things I kept them in there, too, and the chickens and things was kept in the box also.

Q. Did you see any of the members of the party come into the kitchen?

A. Yes.

Q. And into the pantry?

A. Yes, in the pantry; both the pantry and kitchen connects together.

Q. I am talking about this trip now.

A. I know what you are speaking about.

Q. Now what did you see them do?

A. I only saw the two ladies come in about midnight, and they had a drink, a little sip of gin in a little water I suppose. That's about all I seen them do.

Q. You saw the ladies come in there by
791 themselves?

A. Yes.

Q. How many occasions did that happen?

A. Just one, and that was Sunday night.

Q. You never served any of the drinks?

A. No, sir; I didn't serve none.

Mr. Parmer:

That is all.

Cross Examination.

By Mr. Mershon:

Q. What time did you start work in the mornings on that boat when she was off like that?

A. What?

Q. Well, what time did you get up?

A. I got up about 5:30.

Q. What time did you knock off and go to bed?

A. Sometimes from twelve to twelve-thirty it was before I got through cleaning up the kitchen.

Q. How often did you do that?

A. Quite often.

Q. You worked until about twelve or one and you got up about five?

A. Well, at 5:30 I got up and had my breakfast ready at about eight o'clock, supper—I means dinner—about one o'clock—

Q. Have you got a pretty good memory, Fred?

A. I have a pretty fair memory.

Q. You remember where the liquor was in the pantry?

A. Oh, yes I remember where all of that was.

Q. What time did you serve breakfast to the
792 guests and to Mr. Yeiser on Saturday morning
after you left here on Friday?

A. I usually served breakfast at eight o'clock, but I never watched the time really to know what the time was. We usually served breakfast at eight o'clock and we served the crew at seven.

Q. You have no recollection now of being down there on that boat and serving breakfast at any particular time on this trip?

A. No, sir. I have no recollection of the particular time but I know it was eight o'clock that we served breakfast. I never watched the time of it because I was busy.

Q. Were the meals ever served late?

A. Yes, we have served late meals.

Q. What time did you serve breakfast on Sunday morning down there; do you remember that particular time?

A. I don't remember the particular time, but eight o'clock is the time when they had their breakfast.

Q. When you are out with guests you may go ahead and serve the crew, but you do not serve the guests until they get ready, do you?

A. No.

Q. In other words, you were not running a boarding-house and ringing a bell for them to come to eat?

A. No. When they got ready they would eat
793 their meals. You couldn't set any certain time, because they go fishing sometimes and they come in past the time, so we serve them when they comes in.

Q. Now how late were you in the kitchen that Saturday night on that trip down there?

A. I don't remember how late it was, but it was around eleven-thirty to twelve.

Q. Now on Sunday night what makes you think it was around twelve?

A. What makes me think it?

Q. Yes—when you saw the ladies?

A. I know it was, because I got through working about that; we had late meals and I was in the kitchen cleaning up.

Mr. Mershon:

That is all.

Mr. Parmer:

This is the last witness I will be able to call today. I have in addition four witnesses and I am sure not more than five, and I am quite sure that I can complete it in half a day, Your Honor, if you are willing to put aside tomorrow for us.

Mr. Mershon:

If Your Honor pleases, I am not complaining, but under the circumstances we feel that the petitioner has held this thing up a little bit. Your Honor has given us some additional time and we feel that he should have been prepared to go forward here as the Court might direct in order that he may not use up the time you are giving us tomorrow. In other words, by not utilizing the time today, he will probably deprive us tomorrow of the privilege of the short rebuttal which we have been patiently waiting to make.

794

(Discussion off the record.)

The Court:

We will take an adjournment until 9:30 tomorrow morning.

(Thereupon an adjournment was taken to 9:30 A. M., October 14, 1937.)

795 Miami, Florida, October 14, 1937, 9:30 A. M.

Morning Session.

The Court:

All right, gentlemen, I am ready to proceed.

Thereupon H. C. MICKLE was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. Mr. Mickle, I believe your initials are H. C.?

A. Yes, sir.

Q. You live where?

A. 1936 S. W. Second Street, Miami.

Q. By whom are you employed at the present time?

A. Standard Brands, Inc.

Q. What do you do?

A. I am a route salesman.

Q. In February and March, 1936, were you employed on the Friendship II?

A. Yes, sir.

Q. What was your job?

A. Sailor.

Q. Now do you remember the occasion with
796 that vessel left Miami on Friday, February 28,
1936, for a cruise down the bay and returning
on March 2, 1936, with two ladies in their bunks who did
not arouse when called? Do you remember that occasion?

A. Yes, sir.

Q. You were not on the boat at the time when the ladies were aroused, were you?

A. No, sir.

Q. Where were you?

A. I was aboard a cruiser towing another launch. I left the big boat before we came into the dock.

Q. Now you had been on the boat during the trip down, had you?

A. Oh, yes.

Q. Had you observed the conduct of any members of the party, and by party I mean the four passengers, during the days that you were engaged on this excursion?

A. Yes, sir.

Q. Did you observe any drinking?

A. I am not sure.

Q. Well, if you are not sure let's don't have it. After the vessel returned to Miami and after the excursion was over, did you go on board the big boat, Friendship II?

A. Yes, immediately after we tied up?

Q. Did you receive any instructions with regard to speaking about what had taken place?

A. Yes.

Q. What instructions did you receive?

797 A. I was told not to say anything about it to anybody.

Q. Well now when you did go on board the big boat what did you see?

A. I don't remember what part of the boat I went on. I probably was up around the bow; I don't remember exactly now.

Q. Well did you see two women?

A. Yes.

Q. Where did you see them?

A. Mrs. Just was on the stern of the boat and Miss Grunow was in Mr. Yeiser's room, stateroom.

Q. Well now during the morning were you at any time alongside of Mrs. Just?

A. Yes.

Q. About what time was that?

A. I would say about ten o'clock.

Q. Did you see anything occur in which Mrs. Just was concerned while you were there?

A. Yes.

Q. Tell us what it was.

A. She was laying there apparently sick. I remember the nurse bringing some medicine, I guess, or something in a glass over to her, and I remember she turned her head away and said she didn't want it.

Q. Who said that?

A. Mrs. Just.

798 Q. Now did you see Miss Gruner that morning?

A. Yes. I went inside the stateroom and talked to her.

Q. You talked to her?

A. Yes.

Q. Did she say anything?

A. Yes. The first thing I asked her naturally was how she felt and she said she felt pretty good but that she had a headache and she said that as long as she left her head still it did not bother her much.

Q. How long were you in there talking to Miss Gruner?

A. Possibly two or three minutes.

Q. Did you have any other conversations with Miss Gruner during the day?

A. I don't think so.

Q. Did you come close to Mrs. Just?

A. I helped to carry Mrs. Just off the boat.

Q. Did you observe anything about her condition at that time that you remember now?

A. No. She appeared to be awake. I don't remember any conversation. We helped those ambulance drivers carry them out and put them in the ambulance—

The Court:

Speak louder.

A. I meant Mrs. Just; just her.

Q. Were you present at night when Mrs. or Miss Gruner left the vessel?

A. Yes, sir.

Q. Did you hear her say anything at that
799 time?

A. I heard her telling the crew goodbye.

Q. That is all you remember about that?

A. That is all.

Mr. Parmer:

You may examine.

Mr. Mershon:

No questions.

The Court:

You may be excused.

800 Thereupon MARY CHRISTIAN was called as a witness in behalf of the petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. What is your full name?

A. Mary Christian.

Q. Where do you live?

A. On the Beach.

Q. What is the street number?

A. 1320 Washington.

Q. You are employed by Walker-Skagseth Food-stores?

A. Yes, sir.

Q. How long have you been employed by them?

A. About three years.

Q. What is your job there?

A. I am a bookkeeper.

The Court:

Speak a little louder, young lady.

Q. I take it that you are acquainted with the system that they have there of keeping their books?

A. Yes.

Q. Are you acquainted with the system that they have for recording the purchases and sales of supplies to yachts?

A. I don't take care of the yacht department; they have a different girl in the winter to take care of the yachts.

Q. Do you know what the system is in general for recording sales and purchases that go from the store?

A. They just make up the bills from the tickets.

Q. What are the tickets you refer to?

A. Purchase sales tickets.

Q. When are they made?

A. When someone comes in and buys something or orders something. The original is kept by the office and the duplicate goes to the person who gets it.

Q. And those are called sales tickets?

A. Yes, sir.

Q. Who gets those sales tickets?

A. They come upstairs to the yacht "girls" and the others I get.

Q. From these tickets what bills do you make out?

A. I don't do any billing; the ones I make just runs through the bookkeeping machine.

Q. Do you mean to say that you take the tickets that are presented to you and you total them, is that right?

A. Yes, we just total the amount at the end of the sheet, total the tickets, and those are posted in the total amount. That is the regular custom, but on statements to yachts they have to employ an extra girl to write everything up when they go out.

Q. You have seen that done, have you?

A. Yes, I have.

Q. By the regular girl who does it?

802

A. Yes, sir.

Q. Now I want you to look at this, which is a photostat of a certain bill issued by your concern—

The Court:

Just let her tell what it is.

Q. All right; can you tell us then what that is?

A. This is a bill to the yacht Friendship for supplies.

The Court:

Now what is in the store where you work, that is, do you have something there which would be the original of which this is a picture?

A. No, the original would be sent to the owner.

The Court:

Is there at the store now another one similar to the original of that bill?

A. There was a third copy made, and all of these records have been destroyed, because the city had us

to clean out the basement last summer on account of fire hazards.

The Court:

Miss Witness, when a bill of goods is sold to a yacht the original was kept or is kept in the usual course of business and the duplicate went to the owner, is that right?

A. Yes, the tickets themselves were kept.

The Court:

Is that ticket ever posted onto a ledger?

A. Well, they have loose-leaf sheets.

The Court:

Are the items posted on that ledger which are purchased, the items of merchandise or just the total amount of the purchases?

A. I think the total amount of the bill is
803 posted on the ledger sheet. This 460.29 was
evidently posted, being the amount of this bill.

By the Court:

Q. What is the date of the purchase on that?

A. 17th of February.

Q. Now when there was a posting made on the book which showed these purchases on that date in February, did that posting consist of an exact copy of what was on the sales ticket or was it just the total amount that was sold that was posted to the account against that particular yacht?

A. Just the total amount would be posted for that day.

Q: Is it true then that this bill, which is a statement of account, of which this is a photostatic copy, was made up by a bookkeeper writing on to this bill all of the items that were unpaid as against that particular yacht?

A. The bills are made from the original slips, and they just copy whatever is on the bill, but that doesn't go on the ledger or anything, what they get is just the total.

By Mr. Parmer:

Q. But you were acquainted with the operations of the girl in that department?

A. Yes. Of course she was acquainted with that kind of work; she took care of it mostly herself, but I know she did that billing because I recognize the writing.

By the Court:

Q. What is her name?

A. Miss Itsel.

804 Q. Where is she now?

A. Well, she is in Staten Island, New York.

Q. Do you recognize her handwriting?

A. Yes, sir.

Mr. Mershon:

Mr. Parmer, did the estate pay that bill?

Mr. Parmer:

Either the estate or the guardian of Mr. Yeiser.

Mr. Mershon:

It was filed as a claim after Mr. Yeiser's death?

Mr. Parmer:

I don't think it was filed as a claim but it was filed in the probate proceedings in order to show an expenditure made by the guardian during Mr. Yeiser's lifetime.

Mr. Mershon:

As far as you know Mr. Yeiser never saw this statement in his lifetime?

Mr. Parmer:

No; the bills were paid by the guardian and that is where the bill was sent.

Mr. Mershon:

Do you know whether that was paid after Mr. Yeiser's death or before?

Mr. Parmer:

That I do not know.

Mr. Mershon:

If Your Honor please, I do not think the predicate has been laid to put this in evidence, but we are willing to stipulate in the record that the records of Walker-Skagseth show that on these dates these supplies were charged and billed to the Friendship II as merchandise sold.

805 Mr. Parmer:

I will accept that, that the goods were sold and paid for on the dates in question.

Mr. Mershon:

Not paid for on the dates in question.

Mr. Parmer:

No, but sold on the dates in question and paid for later. I assume that Mr. Mershon does not want to admit delivery. I do not say that I have proved it, however, on the other hand, I do not want it understood that I am waiving the inference which can be taken from the fact that the goods were sold and paid for.

Mr. Mershon:

Apparently, Your Honor, they have identified these instruments as having come from this store, and we have

no objection to letting them go in with the understanding that we object to them being offered as proof of delivery of any of the articles in question.

Mr. Parmer:

That is agreeable.

The Court:

All right, let them be filed in evidence.

(Thereupon the photostatic copies of statements were marked Petitioner's Exhibits 6-A, 6-B and 6-C, respectively.)

(Witness excused.)

806 Thereupon: DOCTOR SPENCER HOWELL
was recalled as a witness in behalf of the Defendant, and was examined and testified further as follows:

Re-Direct Examination.

By Mr. Parmer:

Q. Doctor, since you gave your testimony have you found that you made a mistake with respect to a portion of it?

A. Mr. Parmer, in checking over my records, I would like to correct the dates of Mr. Yeiser's treatment by me, the time I attended Mr. Yeiser, if you please.

Q. Go ahead and state what you found out.

A. My records in the office show that I was in attendance on him on the night of February 18 to—

Mr. Mayne:

We object to it and say that the records speak for themselves. If he has such records, let him produce them.

Mr. Parmer:

Very well, I will ask him another question.

(By Mr. Parmer):

Q. Since attending at the trial have you refreshed your recollection from your records with regard to the time during which you treated Mr. Yeiser?

A. I have.

Q. Will you tell us when you began to treat Mr. Yeiser?

A. February 18th.

Q. Of 1936?

A. Yes.

Q. When did it end?

A. March 7, 1936.

807 Q. At that time had he died or did he die?

A. I suppose so; my records show that that was the conclusion of the case.

Q. But you do remember that he did die?

A. Yes, he died.

Mr. Parmer:

That is all.

Re-Cross Examination.

By Mr. Mershon:

Q. Doctor, you mean by that that you now withdraw the statement that you made under oath that you had treated Mr. Yeiser for about two months?

A. Mr. Mershon, I suppose I am under oath at the present time; at least, I trust I am, but I would like to make that correction if it is possible.

Q. By that you abandon that other statement altogether?

A. Yes. The records will show that I said from six weeks to two months.

Q. And in making the statement you now make tonight you rely upon the contemporaneous record that you made at the time?

A. Yes.

Q. And that is the basis of your testimony tonight, that you attended him only from February 18th to March 7th; I mean your record is the basis of that?

A. Yes.

Q. The record that you made at the time?

A. Yes.

Q. Are you also now prepared to rely upon
808 the record which you made in the St. Francis Hospital about your diagnosis of Mrs. Just?

A. That record stands as my testimony indicated yesterday.

Q. You are relying on your testimony rather than the records that you put in the St. Francis Hospital?

A. No; that went through the Court yesterday.

Q. You don't want to change that?

A. No.

Q. You don't want to rely on your record in your handwriting as to that?

A. I don't care to change it.

Q. Doctor, now with this change in your testimony, do you wish to change the other part of your testimony wherein you testified yesterday that you began treating Mr. Yeiser on, namely, February 17th and it continued to February 28th. You will recall that the boat left on February 28th for a cruise down on the Keys,—so you treated him from February 17th to the 28th, ten days?

A. If that is what the record shows.

Q. You say you started treating him on February 18th?

A. Yes.

Q. And you stated that the boat left on the cruise down on the Keys where the ladies were injured,—that the boat left about February 28th.

A. I can look that up for you.

Q. You know it was Monday when the boat got back, don't you?

A. Yes.

809 Q. You know it was Friday before that Monday that the boat left to go down to the Keys?

A. I think that is right.

Q. And you know that Monday was March 2nd?

A. That is right.

Q. And you know that Sunday would be March 1st?

A. Yes.

Q. That Saturday would be February 29th?

A. Yes.

Q. So therefore when the boat left would be February 28th?

A. That is right.

Q. So you treated Mr. Yeiser ten days, is that correct?

A. That is right.

Q. And you testified that within the period you were treating him that you brought down his liquor consumption from one gallon of gin a day to four ounces per day?

A. Yes.

Q. By progressive treatment?

A. Yes, sir.

Q. You brought it down to that in a period of ten days?

A. Yes, sir.

Mr. Mershon:

I think that is all.

Re-Direct Examination.

By Mr. Parmer:

Q. Doctor, when you were first called to treat Mr. Yeiser where did you find him?

A. Where did I find him, sir?

810 Q. Yes, where was he?

A. Aboard the boat.

Q. In what condition was he at that time?

A. Pretty bad.

Q. To be more particular, tell us just what it was.

A. Well, he was completely under the influence of alcohol; he was sick; his legs were bad under him; that's about the best picture that I can paint to you.

Q. Prior to this going on this yacht did he come ashore at any time?

A. No, sir. At least he told me he didn't; I could not say whether he did or didn't, but he told me he had not been ashore in six months.

Mr. Mehrtens:

I move to strike both the question and the answer on the ground of hearsay.

Mr. Parmer:

To the latter part of it I will consent.

(By Mr. Parmer):

Q. Now you saw him on the boat each day?

A. Yes.

Q. Did you notice any improvement in his condition?

A. Yes, sir.

Q. Did you get your report with regard to the amount he was consuming from someone on the boat?

A. Yes.

Q. From the nurses?

A. Yes, sir.

Q. Now on the day or the day before he left on this cruise, did you receive any report from the
811 nurses with regard to their having been ashore with him?

A. Yes, sir.

Q. You went ashore with him yourself?

A. No, sir. I might say that I saw him one day returning to the boat.

Q. When was that; was that the day before he left on the cruise?

A. I can't say definitely the time, but it was right at that time.

Q. It was just before he went on the cruise?

A. Yes, sir.

Q. He was with the nurses when he came back?

A. Yes, sir.

Q. But you don't know of any time that he was ashore during the time that you treated him?

A. No, sir.

Re-Cross Examination.

By Mr. Mershon:

Q. Doctor, did you call the day nurse and the night nurse who attended him while you were treating him?

A. Yes. They seemed to have been with him before; they—some other doctor had taken care of him at some other time in the past; I don't know who he had.

Q. Did you find the nurses or did you bring in new ones?

A. No, I used those nurses.

Q. Who called you on that case; did Mr. Yeiser
812 himself do it or did his captain?

A. I don't know whether he instructed that I be called or not; I know that I received the call.

Q. You don't know from whom you actually got the call?

A. Not definitely, but I was welcomed apparently by Mr. Yeiser.

Q. Did Captain Roberts call you on that case?

A. I can't say; I don't know; I know that I received the call and went to the boat, and that's all I know.

Q. Did you receive it personally or did it come to your office?

A. I don't know whether it came to my office or not; I don't think I received it personally; I am not sure about that.

Q. Do you remember the circumstances of your first visit to him?

A. What do you mean by that?

Q. Well, do you remember what time of the day it was that you went there and just who you met when you came aboard?

A. Well, I could go into a bit of detail on that.

Q. Is that shown on your records or are you remembering that?

A. This is just my memory.

Q. Yet you don't know how you got the call in the first place, whether you received it personally or whether it came to your office?

A. That was a trifling thing; you don't remember how you get calls; I wouldn't remember that unless there had been something unusual about it.

Q. There was nothing unusual about this call?

813 A. There wasn't anything unusual about that call, but I regretted that I had a drunk to take care of.

Q. You had that information when you got the call that you were going to take care of a drunk?

A. No, I got that information after I got there.

Q. Then you were not regretful until you got aboard?

A. That is right.

Q. Did you know Captain Roberts prior to the time you called on Mr. Yeiser?

A. No; I don't know that I did, sir; I might have seen him or might have met him on a fishing boat, or something like that; but I didn't remember him; neither do I remember Mr. Mehrtens coming to me, coming to my office; I do not remember the gentleman, and I am sorry I don't.

Q. He wasn't an old friend or even a casual acquaintance of yours?

A. Who?

Q. Captain Roberts.

A. No, sir.

Q. Did you know the two nurses?

A. Yes, sir.

Q. How long had you known them before you called on Mr. Yeiser?

A. Quite a while, sir; they happened to be attached to the hospital where I was on the staff.

Q. Do you desire to change any other part of your testimony than that which you have specifically referred to?

814

A. No, I do not know that I do.

Mr. Mershon:

That is all.

Mr. Parmer:

That is all; thank you, Doctor Howell.

815 Thereupon: DR. ROBERT MILLER HARRIS

was called as a witness in behalf of the Petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. Doctor, what is your full name?

A. Dr. Robert Miller Harris.

Q. Where do you live?

A. At the Granada Apartments.

Q. Where is your office?

A. Huntington Building.

Q. Are you a physician licensed to practice medicine in Florida?

A. Yes.

Q. How long have you been so licensed?

A. About 13 years.

Q. Did you on March 2nd, 1936 receive a call to attend professionally Mrs. Just?

A. Yes, sir.

Q. From whom did you receive the call?

A. From Dr. Spencer Howell, of Miami.

Q. Did you receive any call from Dr. Foxworthy to do it?

A. No, sir.

Q. Now where did you go, if you did treat her, in order to do so?

A. I went over to St. Francis Hospital on Miami Beach.

Q. About what time did you go there to do it?

816 A. It was between eight and nine o'clock in the evening of March 2nd.

Q. When you arrived there whom did you see?

A. I saw the individual in charge of the floor. I later saw the patient and the patient's nurse, special nurse, in her room.

Q. Did you see Dr. Howell there at the time?

A. I didn't see him when I first arrived.

Q. Did you make an examination of Mrs. Just?

A. I did.

Q. Can you remember what you found on the examination?

A. As I recall, the general physical examination was essentially normal. I found no gross abnormalities. When I first observed her she was confined in an oxygen tent. We removed the tent and made a more or less general examination which yielded essentially normal findings. As I recall the reflexes or knee jerks practically were diminished, and there was also evidence of a little drowsi-

ness and lack of coordination and inability on the part of the patient to answer questions coherently and to follow a line of questioning in any degree of detail.

Q. Were you able solely on your examination of the patient to form any opinion as to what had caused whatever you found?

A. I couldn't definitely form an opinion.

Q. Were you appraised of the history of the case?

A. That was recorded on the chart.

Q. And that is all you know about it, what was recorded on the chart?

A. Yes, sir.

Q. And from the history were you able to state any conclusion as to what happened?

A. As I recall, my impression on the history was that the patient had probably suffered from carbon monoxide poisoning?

Q. But taking her just as you looked at her, without the history, you could not find anything definite?

A. I could find no evidence of anything specific.

Q. In general you could not tell by looking at her whether it was carbon monoxide poisoning or alcoholism?

A. I could not be sure of what the trouble was.

Q. Did you later on, after treating Mrs. Just, speak to Doctor Howell?

A. Dr. Howell came during the time that I was seeing the patient.

Q. At the time that he did come had you already given her a treatment?

A. I had.

Q. Did he talk to you about the case and what he had done?

A. Yes, he made a few remarks about the case.

Q. Did you ascertain what treatment he had already given to Mrs. Just when he brought her to the hospital?

A. That was recorded on the chart. Yes, I knew about the treatment.

818 Q. Now did you pass on whether the treatment which he had given was correct or not?

A. Well, the issue wasn't raised, as I recall it, whether the treatment was correct or not, but I saw no criticism in the treatment that had been given.

Q. Now can you recall whether the possibility was mentioned to you of alcoholism being in any way responsible for the condition?

A. I can't recall at the first time I saw the patient that the question of alcoholism was mentioned. I have a faint recollection at the moment that the question was raised or supposition was raised more as a matter of conjecture, as the way I got up, but I don't recall just exactly who raised that question, but it wasn't raised at the time that I saw her that night as far as my recollection goes.

Q. But you do remember that it was mentioned?

A. It was mentioned but I don't recall just exactly who mentioned it, whether it was Dr. Howell or whether it was one of the house-men, but I have a recollection that one would naturally wonder on something of that sort, whether such a condition might have existed.

Q. And you are not able to form an opinion whether it was alcoholism or something else on what you saw?

A. I could smell no odor, of course, of alcohol at the time I saw her, which was approximately 13 hours after the onset of the attack, and I couldn't form a
819 definite conclusion.

Q. And in the meantime she had been in an oxygen tent?

A. Yes, for several hours and had oxygen administered as well as other treatments.

Cross Examination.

By Mr. Mershon:

Q. Doctor Harris, when to the best of your recollection were you called by Dr. Spencer Howell and asked to see Mrs. Just?

A. I do not recall just exactly the time, but to the best of my recollection it was late in the afternoon.

Q. Did Dr. Howell then give you a case history and his idea of what was wrong with the patient?

A. I can't remember the details of it, Mr. Mershon, however, I do know that the question of carbon monoxide poisoning was suspected, because when I gained that impression and before I went there later on to see her I went by the drugstore and got an ampule of a solution which has been given to patients suffering from carbon monoxide poisoning and is supposed to be a mild antidote. That was the reason I took it over there with me, because that impression was given to me.

Q. What was that antidote?

A. Well, the solution that I have was a solution of what is known as methylene blue.

Q. Had that up to that time been recommended as an antidote?

A. It is used and it has been used certainly in the past in hospital dispensaries and First Aid Stations for carbon monoxide poisoning.

820 Q. Would you have taken that precaution if you had not been informed by Dr. Howell that a carbon monoxide poisoning condition existed and would need some curative?

A. I would not have taken it, no, sir.

Q. When you got to the hospital did you find on the hospital records that Dr. Howell had shown a history of "apparently being overcome by fumes from boat's engine"?

A. Yes, sir.

Q. Doctor, what factors enter into diagnosing a patient's condition to determine treatment to be given?

A. You mean of carbon monoxide poisoning?

Q. No. Any patient that you are called to see what are the things you do to find out the basis of your diagnosis?

A. The first important thing is to try to secure a reliable history of the illness; the second thing is to determine by as careful a physical examination as possible what abnormalities exist; the third thing is to try to corroborate the history and physical examination by suitable laboratory and, if necessary, X-ray studies. That is the correct procedure in arriving at the diagnosis.

Q. In Mrs. Just's case was the case history taken into consideration by you?

A. Yes, sir.

Q. Considering the case history and the condition which you found, including the knee reflexes, the incoherency of the patient and the drowsiness to which you referred, all of those taken together, did that cause you to confirm Dr. Howell's diagnosis of carbon monoxide poisoning?

A. I do not know that the diagnosis was actually confirmed but the existence of carbon monoxide poisoning, in view particularly of the history, was suspected.

Q. Was there anything about your examination of the patient, the symptoms that you observed, which gave you the impression that her symptoms were due to the existence of acute alcohol intoxication?

A. No, sir.

Q. What branch of the medicine do you particularly specialize in?

A. I specialize in the branch commonly known as internal medicine, which is known to the laity, I presume, as diagnoses or diagnostician.

Q. Are you called upon frequently by other physicians for consultation and to either make or confirm diagnoses?

A. Yes, I see quite a few patients in that capacity.

Q. In layman's language are you what might be termed a doctor's doctor, that is, a consultant?

A. I might be called a consultant or something like that.

Q. Would you be called a specialist in diagnoses?

A. Yes, in a rather broad sense, because the field of internal medicine is quite broad.

Q. In your practice do you treat or undertake to treat cases of alcoholism, acute or otherwise?

A. I have tried a few, but they are very distasteful to me and I dislike very much to have any connection with them, and I have had very little connection with them since a very unpleasant experience I had with one at one of the local hospitals.

Q. You have had enough experience in the treatment of these cases to recognize the symptoms?

A. I have a fair knowledge of the symptoms.

Q. Did you actually inject methylene blue in treating Mrs. Just that evening?

A. I did.

Q. Is methylene blue prescribed in the treatment of acute alcoholism?

A. No, sir.

Q. So in making that injection you were actually treating her as a patient suffering from carbon monoxide poisoning?

A. Yes, sir.

Q. Where a person has consumed so much alcohol that it has finally reached an acute stage requiring hospitalization and medical treatment, does the body become saturated with the odor of the fumes of the alcohol?

A. To a certain degree, yes.

Mr. Mershon:

That is all.

Re-Direct Examination.

By Mr. Parmer:

Q. Well, doctor, when you say that the body becomes saturated to a certain extent, have you any opinion as to how long a time the body will remain saturated so that you can smell it?

A. I do not know the actual duration of time, but I imagine that would depend upon the amount of alcohol consumed.

Q. And also any eliminative treatment?

A. Yes, and the individual's susceptibility I would say.

Q. At the time that you saw Mrs. Just, doctor, you were looking at the then result of something which had caused that result many hours before?

A. That is right.

Q. Is it possible or was it possible, doctor, that that then result which you saw could or might have had its origin in alcoholism?

A. There was very little to be seen. As I say, in a physical examination I presume it is possible that it could have been.

Mr. Parmer:

That is all.

Re-Cross Examination.

By Mr. Mershon:

Q. The case history showed that Mrs. Just had slept in a stateroom where admittedly the gas fumes of the motors were present, containing monoxide carbon or carbon monoxide gas in an undetermined quantity. If that were a clear, demonstrated and admitted part of the history, that she had been exposed to carbon monoxide gas in a small stateroom with the windows and door

closed, and she was brought out unconscious, and her companion, another lady sleeping in the same room, was also found unconscious and brought up in the open
 824 air; that she had received the treatment that you found on the hospital chart prior to the time you saw her, and you found her in the condition you found her, and there was no evidence of her having a single drink of alcohol after twelve o'clock on the Sunday night before, and there was no evidence of her having done any heavy drinking, but merely having taken an average of two or three drinks of gin over a period of a couple of days before, would you under those circumstances diagnose the situation you found as carbon monoxide poisoning in view of that case history?

A. Yes, in view of the case history I think one would strongly suspect carbon monoxide poisoning.

Q. Now, doctor, when a person is knocked out or passed out from the excessive use of alcohol, during the first onset of the disease or the illness and the intervening time is the odor of alcohol on or about them?

A. It is usually very obvious.

Q. And I believe you said that a matter of 13 hours, with purgatives and oxygen tent and baths and things might to some extent extinguish that odor?

A. I think that is entirely true.

The Court:

Doctor Harris, was your giving this injection for the purpose of making a test or was it for the purpose of treatment of the case of carbon monoxide poisoning which you understood existed?

The Witness:

It was for the purpose of treating it. Unfortunately in this particular case no test of the blood was made.
 825 That was an error of omission on the part of all of the attending physicians, of which I am a

party. There are many tests, at least three or four tests, and all of them are fairly simple—since we have investigated the matter a little bit more carefully—which show in a large percentage of cases whether carbon monoxide poison is present or not. One of the tests, a perfectly simple test, requires two or three drops of blood in a little water and a couple of acids mixed with it and so forth, but unfortunately that wasn't done. There are also tests to determine the presence and the amount of alcohol contained in the blood, and that was not done. That is a very complicated test, and that wasn't done in this particular case; and the injection that I gave her was an injection which I felt might have some slight benefit provided that carbon monoxide poisoning existed.

The Court:

You say you carried that ampule with you?

The Witness:

I got that ampule on the way over there; I stopped at the drugstore and got it.

The Court:

Was it a medication which would or would not have done any harm?

The Witness:

It wouldn't do any harm. It is given in many cases and ordinarily the patients get no reaction, but in this particular case of Mrs. Just she got a reaction to it, and I was alarmed at the moment and stopped the injection before she had received more than 50 per cent. of it, and gave her some adrenalin, which is a stimulant. I afterwards—before I left the hospital—talked to her aunt and found that she was an individual who is allergic, which means they have an idiosyncrasy to certain drugs and what not, and I felt very definitely about

this unusual reaction which she had following the small amount of this supposed antidote, and felt that it was due to this basic allergy which she had had for maybe many years.

The Court:

Did you subsequently give her the other 50%?

The Witness:

I subsequently gave her no more; I stopped it.

The Court:

When did you first learn from this aunt that she was allergic?

The Witness:

After I went out of the room.

The Court:

That same evening?

The Witness:

Yes. After she had this unusual reaction I felt that I should understand the nature of what had happened, and then the aunt said that she didn't know, of course, what it was about, but she told me that the doctors had said she was allergic to certain things.

The Court:

Is the possession of one's mental faculties incident to saying that that is a condition of being allergic?

The Witness:

No, that has nothing to do with it.

The Court:

What was the mental condition at the time you administered this methylene blue?

The Witness:

She was a little drowsy; she was yawning frequently, sort of stretching, drowsy and sleepy, and she
827 would have to be stimulated; in other words, you would have to sort of shake her or attract her attention to get sufficient cooperation out of her so that she would answer your questions; she was in just a state of sort of drowsiness and rolling and moving in the bed.

The Court:

Now along another line: Does the presence of alcohol in the human system intensify the condition when one has inhaled certain monoxide gas, either so far as degree of suffering or being affected thereby or the ease or quickness with which one does become subject to it or the length of time that it continues?

A. I do not know sir.

The Court:

That is all I care to ask.

By Mr. Mershon:

Q. Are stimulants or sedatives regarded as the treatment for carbon monoxide poisoning in its initial stages?

A. My opinion is that practically the only thing that is of any great value in carbon monoxide poisoning is oxygen and a small amount of carbon dioxide to stimulate breathing. I don't think these other things are any good unless there is a degree of shock; I do not think the methylene blue or anything was of any value at all and probably should not have been given.

Q. What treatment is used for shock?

A. Warmth, palliatives, particularly glucose solution and salt solution, and occasionally blood trans-
828 fusions if they are available immediately; certain stimulants, such as caffeine, camphor and such things as mutrazol.

Re-Direct Examination.

By Mr. Parmer:

Q. The time to find out whether a person has been suffering from carbon monoxide poisoning is as close as you can get to when they came out of the place where the carbon monoxide atmosphere is found?

A. Yes, sir.

Q. That is, the nearer you get to that time the better chance you have of finding out?

A. Yes, sir.

Q. And those who were present at that time, that is, those doctors who were present at that time, were in a far better position than you ever were in this case to determine that fact?

A. Absolutely.

Re-Cross Examination.

By Mr. Mershon:

Q. Doctor, if two young ladies were sleeping in a state-room where you knew that carbon monoxide gas had been present, and they were found there the next morning unconscious, and there was no history whatsoever of alcoholism or anything else that you could suspect that would create that condition, and you knew that carbon monoxide gas was in the room,—would you deem it necessary to make a test before treating them for carbon
829 monoxide poisoning or would you diagnose it as carbon monoxide poisoning?

A. I would not deem it necessary, but it would seem that the weight of evidence would indicate that that was the most likely thing, however, to more or less prove the diagnosis a blood test is made.

Q. Then looking backward, doctor, and excusing the physician in charge for not making that test, wouldn't it be logical to assume that he had no reason to suspect anything but carbon monoxide poisoning?

Mr. Parmer:

I object to the question on the ground that he is asking this doctor to read the mind of another man.

The Court:

It is objected to on the ground that this witness cannot read the mind of another witness, but I think that it seeks an opinion as to which the Court should draw a conclusion rather than the witness, so I sustain the objection.

(By Mr. Mershon):

Q. Doctor Harris, if two young ladies were found in a stateroom where carbon monoxide gas was admittedly present and they were found in an unconscious condition, and the beds in which they had been sleeping were wet from urination, each of them; and each of them was found unconscious, could carbon monoxide gas cause an involuntary urination while the victim was under the influence of it?

A. Yes. Any assault which is sufficient to produce unconsciousness might cause an involuntary stool or urination.

830 Q. Would it be just as reasonable to assume that the urination by both of the victims in their respective beds was caused by the effect of carbon monoxide gas as by an overdose of alcohol?

A. Yes.

Mr. Mershon:

That is all.

(Witness excused.)

831

Thereupon: LEE B. FISHER was called as a witness in behalf of the Claimants, and having

been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Mershon:

Q. What is your full name, sir?

A. Lee B. Fisher.

Q. Where do you live, Mr. Fisher?

A. Coconut Grove.

Q. How long have you lived in Dade County?

A. Six years.

Q. What is your business?

A. Naval architect and Marine surveyor.

Q. Did you know Mr. Henry C. Yeiser in his lifetime?

A. Yes, sir.

Q. Have you had any business relations with him?

A. Yes. I sold one of his old boats for him.

Q. Do you know Captain Frederick Roberts?

A. Yes.

Q. Was he Yeiser's boat captain?

A. At the time I knew him, yes.

Q. Do you recall when Mr. Yeiser owned a yacht called the Friendship I?

A. Yes, sir. I sold that boat for him.

Q. Well, do you recall the occasion when Mr. 832 Yeiser purchased from Dr. Adams the yacht called the Amity?

A. I couldn't be positive about the date. I submitted the Amity to Mr. Yeiser.

Q. Wait a minute; do you remember the time before Mr. Yeiser ever owned the Amity?

A. Yes.

Q. Do you remember the time after Mr. Yeiser acquired the Amity?

A. Yes.

Q. What did he do about the name of the yacht Amity?

A. He changed that name after he bought the boat.

Q. What did he change it to?

A. I am trying to think of that now.

Q. Was it Friendship II?

A. I believe it was, yes. It was the same as the old boat, only he added the "II" to it.

Q. Did you make any effort to interest Mr. Yeiser in the purchase of the Friendship II at the time her name was the Amity?

A. From Dr. Adams?

Q. Yes.

A. Yes.

Q. If so state as well as you can remember your negotiations.

A. They sent me word of the type of boat they wanted.

Q. Who sent you word?

A. Captain Robert.

Q. Where did he send you word from?

A. He sent me word three or four days before
833 they arrived here from the West Coast, telling me what they were looking for, and when they arrived I submitted the Amity as the boat to fill the specifications.

Q. Did you show them the boat?

A. I introduced Mr. Yeiser to Captain Archer. I was busy at the time, so I didn't stay aboard all of the time Mr. Yeiser was there.

Q. Where did you meet Mr. Yeiser and his party for the purpose of introducing them to Captain Archer?

A. At the Royal Palm Dock.

Q. Is that in Miami?

A. Yes, in Miami. She was laying there with his old boat, the Friendship I.

Q. Yeiser's boat was laying there?

A. Yes.

Q. Where was the Amity?

A. The Amity was at the City docks, so we drove to the City docks where I introduced him to Captain Archer.

Q. Did Mr. Yeiser and Captain Archer have any discussion about the Amity?

A. Yes, I heard part of the conversation, and he, as he did with all prospects that I had brought aboard the boat, enumerated the repairs that were needed on the boat.

Q. Who did that?

A. Captain Archer.

Q. Do you recall any of the things that Captain Archer said would have to be done in the way of repairs?
834

A. Yes, he enumerated some planking in the stern and he brought up the fact that the exhaust line needed repairing, that it had been patched but it needed repairing.

Q. Captain Archer said that?

A. Yes; he gave that information to him; in fact, he gave that information to every prospect that was ever brought aboard the boat.

Q. Had you taken other prospects there?

A. Yes, I had at least six or seven prospects aboard there in the winter for the purpose of buying.

Q. Were you in any way concerned in the matter of repairs that the boat might require?

A. Well, of course in a way I was somewhat concerned because if there were too many repairs it might kill the sale of the boat, but that really had no bearing on it, because if anyone was interested in the boat those repairs were minor.

Q. Isn't it a fact that the owner of a boat always has to be doing something to it and doesn't he have to be prepared to do it?

A. There is always work on a boat in the way of upkeep.

Q. Did Mr. Yeiser purchase the Amity through you?

A. No, he didn't. You see, the boat was not purchased for sometime after that. I have forgotten the

length of time, but it was a full five weeks. I was busy at the time and couldn't stay around with him very much; in the meantime, he had met Mr. Lindstrom, a
 835 broker, and he consummated the deal through him.

Q. Well, did you at a later date do any business for Mr. Yeiser, if so, what?

A. Well, he was a little apologetic about leaving me out on the sale, so a little later after he bought the boat he gave me an order for a very fine fishing boat.

Q. Did you consummate the sale of any boats for him?

A. Yes, I consummated the sale of his old boat, the Friendship I.

Q. Do you recall approximately when it was you sold the Friendship I?

A. I could not be positive of the date.

Q. I mean in general, the time of the year.

A. It was about five months, I should say, after he bought the Amity.

Q. Now on this occasion that you introduced Mr. Yeiser to Captain Archer on board the Friendship II at the City docks in Miami, who else do you recall, if anyone, was in the party with you and Mr. Yeiser?

A. I could not be positive about that. I remember distinctly Mr. Yeiser, of course; I concentrated on him mostly. I could not be sure whether Captain Roberts or the Chief were there or not; I could not be positive on that point.

Mr. Mershon:

That is all.

836

Cross Examination.

By Mr. Parmer:

Q. Are you able to tell from your records, sir, when it was that you first had this boat for sale?

A. The Amity?

Q. Yes.

A. Well, I think Mr. Adams and Captain Archer had informed me that the boat was for sale fully a year before Mr. Yeiser bought it. I had had several prospects aboard.

Q. You mean during that year?

A. Yes, during that year I had had several prospective buyers, but I cannot recall the exact date; I would have to go through my correspondence for that.

Q. Did you see your correspondence before you came to Court here?

A. No, I didn't look up the matter at all.

Q. How long have you known you were going to be a witness in this case?

A. The day of the subpoena is the first I knew of it.

Q. What day was that?

A. That was the 5th. I can't remember what day it was, but I think it was the 5th.

The Court:

Do you have the subpoena in your pocket?

The Witness:

Yes, I have it here. It is the 5th day of October.

(By Mr. Parmer):

Q. Well, had anyone talked to you about the matters concerning which you are testifying now before you received that subpoena?

A. No.

Q. Are you sure of that?

A. Not in this case at all.

837 Q. Had not some lawyers come down to see you to find out what you knew about the case before you got the subpoena?

A. In this case?

Q. Yes.

A. No.

Q. You say "in this case". Do you mean to distinguish between the conversation relating to this case and the conversation relating to the Friendship?

A. No. I never knew anything about this suit until the subpoena was served; I didn't know there was going to be any suit, and I had had no conversation regarding this suit at all up to the time I received the subpoena. As a matter of fact, when they served the subpoena I wasn't at home; I was out of town.

Q. You learned after you got back that someone had been down to your house with a subpoena, is that right.

A. Yes.

Q. And later on they came around and served you?

A. No, the next thing that happened was that I came up and accepted the subpoena right here.

Q. Before receiving the subpoena you came up?

A. No, I received the subpoena at home, and I came up, the day the subpoena said to be here.

Q. In other words, the subpoena was left at your house?

A. Yes.

Q. And you came home and found it and then came to Court?

838

A. Yes, came to Court.

Q. Up until that time you didn't know what it was all about?

A. No.

Q. You didn't know why they wanted you in Court?

A. No.

Q. You didn't know anything why they wanted you in Court until you actually walked into Court?

A. Naturally when I walked in the hall here and read the subpoena, then of course I knew what it was about.

Q. Because someone told you?

A. No.

Q. How did you know if someone didn't tell you?

A. Well, the subpoena states it.

Q. What does it state?

A. It gives the names of the parties.

Q. When did you first discuss with someone with regard to the sale of the boat Amity to Mr. Yeiser?

A. When the Friendship I landed at the Royal Palm Dock.

Q. I want to know when you discussed with any of the lawyers in the case what had taken place at the time that you introduced Mr. Yeiser to Captain Archer?

A. What had taken place?

Q. Yes; in other words, you came to Court here today to testify to what took place at that time. I want to know when you talked it over with the lawyers in the case?

A. Well, let me see. There was nothing talked
839 over with the lawyers in the case until a long time after the boat was sold, and that talk I had with the attorneys was an entirely different matter; that was a case about a commission.

Q. I want to know if you understand my question?

A. About this case I never had any conversation with the lawyers at all until I came in Court here.

Q. You mean until you came to Court?

A. Until I came out there in the hall.

Q. And that conversation you had out there was with regard to what had taken place when you brought Mr. Yeiser over to the Amity and introduced him to Captain Archer?

A. I haven't even talked of this case with any attorneys.

Q. Do you mean to say that these attorneys put you on the witness stand and asked you questions with regard—

A. They talked to—

Q. Wait a minute. Do you mean to say that these attorneys put you on the stand without first informing you or without first asking you as to what you were going to say?

A. They certainly did not inform me what I was going to say. For your information, I made an affidavit on an entirely different case, which case was in regard to a commission, and it had no bearing on this case. I made that affidavit some months after the boat was sold, but that had nothing to do with this case.

Q. Did you ever tell the attorneys in this case just prior to your going on the stand about the conversation which took place on board the yacht Amity between Mr. Yeiser and Captain Archer?

A. Yes.

Q. When did that happen?

A. That is in the affidavit I am speaking of.

Q. When did you sign that affidavit?

A. Well, I couldn't be positive of the date.

Q. About how long ago was it?

A. Over a year ago.

Q. Were you informed at that time that your affidavit was being taken in connection with some other matter?

A. Another case entirely.

Q. Having to do with a commission for the sale of a boat?

A. With a commission on this same boat.

Q. You mean a commission on the Friendship II?

A. Yes, the Captain's commission.

Q. The Captain's commission.

A. Yes.

Q. You mean Captain Archer's commission?

A. Yes.

Q. You mean you were a witness for him in some claim that he had in connection with a commission?

A. That is right.

Q. And that matter was being handled by the lawyers who took the affidavit?

A. Yes.

Q. They were representing Captain Archer?

841

A. Yes, sir.

Q. Now at that time you say you were not informed that you were to be a witness in this case?

A. That is correct.

Q. The first you knew about it was around the 5th of the month when you got the subpoena?

A. Yes, that is right.

Q. And since that time you have not looked over your correspondence?

A. Not at all; I haven't checked up on anything.

Q. Now you say you had this boat for sale for one year and during that year you produced the various prospective buyers?

A. Yes.

Q. Were any of those prospective buyers produced by you before Christmas of 1933?

A. Well, I could not commit myself on dates, but it does not seem to me that it was that long ago.

Q. Have you any idea when the sale took place to Mr. Yeiser?

A. I should say offhand it was something more than three years ago.

Q. Do you have any idea of the month?

A. No, I have forgotten, but I can look it up. I can check it up from my files very easily because I had quite a lot of correspondence on it.

Q. Was Mr. Yeiser the last person you brought aboard?

A. Yes, he was the very last one that I brought aboard.

Q. How many did you bring aboard before that?
842

A. I should say at least six different prospects.

Q. How long before you brought Mr. Yeiser on board the boat was it that you had brought your first client there?

A. Well, that would be pretty hard to say; I could not very well commit myself on that, but I should say offhand that I had that boat for sale a full year as I said before, these other prospects were brought aboard in the course

of a year, and Mr. Yeiser was the last prospect I brought aboard.

Q. Would you say that you had brought any prospective purchaser on board the Amity within four months before you brought Mr. Yeiser on?

A. Yes, and I think it was a shorter time than four months, because it was right in the middle of the season, and I had one or two prospects and I expect that it was not more than two months before Mr. Yeiser was brought aboard.

Q. Not more than two months?

A. That is right.

Q. Did you have others before that?

A. I had them in the course of the year.

Q. On each of those occasions did you say that Captain Archer would say to the prospective clients which were brought on board that the exhaust pipes had to be repaired?

A. Well, usually—he didn't always enumerate the repairs, and naturally I asked him to do it, because I didn't like to sell a boat that—

Q. What I am asking you, sir, is this: on each
843 of these occasions that you brought prospects on board the Amity, which occurred before Mr. Yeiser's time, did Captain Archer refer to the exhaust pipes, and did he say they needed repairing?

A. Yes, in every instance, because it was a well-known fact that the exhaust pipes were poor and needed repairs or new exhaust pipes.

Q. Well, did Captain Archer say to the prospective clients who preceded Mr. Yeiser that the exhaust pipes needed repairs because they were leaking?

A. I don't know whether if in each instance he gave them that statement, but he made the statement that they should be renewed or repaired.

Q. Renewed or repaired?

A. Yes.

Q. And you just stated that they had been patched?

A. Well, that is renewed.

Q. Well, that means repaired?

A. Repaired, yes.

Q. It had already been repaired?

A. It had been repaired in that way, by patches, yes.

Q. Do you know when that happened?

A. I don't know when Captain Archer had that work done; I never inspected it personally.

Q. I understand that, but I want to know just what Captain Archer would say to these prospective
844 clients of yours?

A. He simply brought to their attention the condition of the exhaust lines, that it needed repairing or renewing; that was one of the things that had to be done.

Q. What I want to know is what he said with regard to the patching which had already taken place.

A. I don't remember that.

Q. You said something about patching a moment ago.

A. Well, repairs; he said that they needed repairs.

Q. What did he say with regard to what had already been done?

A. He didn't say anything about that as far as I know or can remember.

Q. What did you mean when you said, as I recall it, a moment ago that the pipes had been patched?

A. I said they needed repairing.

Q. In other words, you do not mean to say that according to your understanding that they had been patched?

A. No, I don't remember any statement about them being patched, but he always made the statement to a client that they needed repairs or renewing; I don't know anything about patching.

Q. And that occurred during every conversation which took place between Captain Archer and any client that would bring to him?

A. That subject was always brought up, what the repairs were, if the client was interested.

Q. And those repairs always included repairs to the exhaust pipes?

A. Yes, that was the main repair as a matter of fact.

Q. You offered this boat to Mr. Yeiser for \$20,000, didn't you?

A. I believe that was the asking price; I can't recall definitely, but I believe \$20,000.00 was the asking price, subject to altering.

Q. And do you remember that Captain Roberts thereafter dealt with Mr. Lindstrom?

A. Yes.

Q. And bought it for much less?

A. I never did know just what the price was, but I know it was less, but of course that is only hearsay; I never did know positively.

Q. And you lost the sale?

A. I lost the sale which he made up for afterwards.

Q. At the time that you did lose the sale were you somewhat provoked?

A. Well, of course, slightly, but, as I said before, he apologized and gave me an order for another boat which he made up for it.

Q. Mr. Yeiser offered you his apology?

A. Yes.

Q. He said that he had not treated you right?

A. Yes; in other words, he gave me an order for the other boat on account of me losing out on the sale of the first boat.

Q. By any chance was it due to the fact that you were unable to find a purchaser?

846 A. You mean a purchaser for the old boat?

Q. Yes.

A. I suppose that helped naturally.

Q. Did you say there was considerable sentiment attached to the business that you were engaged in at that time?

A. Well, nothing to amount to anything; I just let it pass.

Mr. Parmer:

That is all.

The Court:

Do you have any more redirect?

Mr. Mershon:

Not now, your Honor.

The Court:

All right; we will adjourn until a quarter of two.

(Thereupon an adjournment was taken until 1:45 P. M. October 14, 1937).

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October 14, 1937, 1:45 P. M.

Thereupon: LEE B. FISHER previously called as a witness in behalf of the Claimants, resumed the stand and testified further as follows:

Re-Direct Examination.

By Mr. Mershon:

Q. Mr. Fisher, on your direct examination you were asked whether you had talked about this case with the lawyers or anyone and you stated that you had not, but

that you had given a statement or an affidavit to some lawyers about a claim Captain Archer had for a commission for the sale of the Friendship II.

A. Yes.

Q. Please state to whom you gave that written statement, if you did so, concerning Captain Archer's claim for commissions.

A. Well, Captain Archer asked me if I would give a statement to his attorneys, and you were his attorney at the time, I believe; I gave it in your office.

Q. Did you come to the office of Evans, Mershon & Sawyer in the First National Bank Building with Captain Archer?

A. Yes.

Q. Did you there relate to Mr. Mehrtens substantially the things you have testified today about bringing Mr. Yeiser aboard?

848. A. I did.

Q. Did you later sign a statement which omitted those things?

A. I did.

Q. Did you during the noon hours, after you had an opportunity to examine the statement which you signed omitted the things that you told Mr. Mehrtens in his office—by the way, did you see the statement during the noon hour?

A. Well, I saw it just before the noon hour.

Q. Look at this, and see if this is the statement you signed?

A. Yes, that is my signature and that is the statement.

Q. Is that the statement to which you referred on your direct examination as being the only one you ever signed?

A. Yes, sir, being the only one I ever saw.

Mr. Mershon:

We offer this statement in evidence, if your Honor please.

Mr. Parmer:

I object to the statement.

Mr. Mershon:

If there is any objection to it, of course we won't insist upon it.

Mr. Parmer:

It is objected to upon the grounds that it is a self-serving declaration.

The Court:

Well, the objection is made that it is self-serving, and I think it would be subject to that objection. Do I understand, Mr. Mershon, that you are willing to let it go in if there is no objection?

Mr. Mershon:

Yes, your Honor.

The Court:

Well, it is subject to that objection.

849 Mr. Mershon:

My only purpose was in order to substantiate the witness' redirect testimony.

The Court:

As to the fact that he had talked with the attorneys?

Mr. Mershon:

Yes, and that this is the statement which he then gave. We will excuse Mr. Fisher, with the Court's permission.

(Witness excused).

850 WILLIAM DAMON ARCHER produced as a witness by the claimants, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Mershon:

Q. What is your full name, sir?

A. William Damon Archer.

Q. Mr. Archer, where do you live?

A. 3145 Day Avenue, Coconut Grove, Florida.

Q. What is your business?

A. Master Mariner.

Q. How long have you been connected with boats and navigation?

A. Ever since I was about nine years old; I sailed with my father.

Q. Were you born in Dade County?

A. No.

Q. How long have you lived in Dade County?

A. 47 years.

Q. How old are you?

A. 51 years.

Q. So you came to Dade County when you were about four years old?

A. Yes, about four years old.

Q. For about how many years have you been commissioned to command boats?

A. My first Master's papers were issued to me in January, 1906 or February, 1906, when I came
851 out of the Lighthouse Service.

Q. Since that time have you been engaged as Captain of yachts and various craft?

A. Well, I would say yes except during the war, and then I was in the navigation service.

Q. You were not in command then?

A. Yes, I was.

Q. You were?

A. Yes, I was in command of a subchaser.

Q. During the war?

A. Yes, sir; and then I was taken out and put in the Intelligence Department, and after that I was just one of the "boys" ashore.

Q. Are you familiar with the yacht known as the Amity, which was at one time owned by Dr. J. H. Adams?

A. Yes, very much so.

Q. Were you Captain of that yacht?

A. I was.

Q. About how many years were you Captain of that boat?

A. I took her in December and gave her up in May—I took her in November and gave her up in May.

Q. How long was that before Henry C. Yeiser purchased it from Dr. Adams?

A. I couldn't say because I was north when he concluded the purchase of that boat.

Q. When did your contract as Captain expire?

A. In May.

Q. Was that May, 1934?

A. Yes, sir.

852 Q. Do you know whether the boat Amity had its name changed by Mr. Yeiser to Friendship II?

A. Yes, I saw the boat after her name was changed and I know it was changed because I know the boat.

Q. While you were Captain of the Amity did you have occasion to know anything about the condition of her exhaust pipes?

A. Yes, sir.

Q. Will you please tell us in your own language the condition of the pipes as you observed them while you were in command of the Amity?

A. Yes, sir. The surveyor for the Insurance Company—

Mr. Parmer:

May we have the last part of the answer precluded?

Mr. Mershon:

I will ask the Court to permit the witness to testify and if there is anything irrelevant or immaterial counsel will have an opportunity to move to strike it. The surveyor is sitting out here now.

Q. Who is the surveyor you are talking about?

A. Captain Patton.

Mr. Parmer:

My objection is that this man was asked to describe something he observed and he starts out by saying something about the surveyor.

(By Mr. Mershon):

Q. Don't tell what the surveyor told you, but just state what you found.

The Court:

I think the witness understands.

853

A. I will try to give it as best I can. When I hauled the boat out she was surveyed for the insurance company. A strut needed fixing aft, and we fixed the strut, and Captain Patton and myself went from stern to stern of that boat hunting other defects. Captain Patton went over the pipes in the boat and reported to me that they would have to be fixed.

Q. You are talking about the exhaust pipes?

A. Yes. I said "Very well". He said they would have to be fixed or replaced. I took the matter up with Dr. Adams, as he was paying the bills, and Dr. Adams said to try to repair them if possible; so I took the matter up with Mr. Knollar, of the Knollar Machine Shop, and he sent

his men in and found two places that needed repairing and repaired them.

Q. Repaired them?

A. Yes, he repaired them, and as near as I can recall one of them was a plug and the other one was a sleeve, and she was accepted by the Underwriter's agent after that, or, as near as I can figure, about the 2nd or 3rd of January. He passed the job and said it was all right.

Q. Then later did you have your attention called to the exhaust pipes or any part of them?

A. I did. My engineer told me that we were making water, and I knew her bottom was sound because she was always dry, always a dry boat, and I said, "Let's go down to the stuffing boxes, because I thought it was one of the stuffing boxes that had come loose. I went down there and the stuffing boxes was all tight, but while
854 fooling around we heard a trickle of water, and we located it under the floor at just about the bathroom hatch; and my engineer took a piece of tape and wrapped tape on it.

Q. What exhaust pipe was that in?

A. The port side, sir; we never had a minute's trouble with the starboard side.

Q. Was that a permanent repair you made there?

A. No, sir, temporarily.

Q. Captain, will you step over here, please. Captain, I call your attention to some copper exhaust pipes, several pieces of them, which have been introduced in evidence as Claimants' Exhibits, 1 to 6, respectively, and further call your attention to the fact that Exhibit number 1 has been identified as the starboard exhaust pipe which connects to the manifold on the starboard engine. The other remaining sections of pipe have been identified as the port exhaust pipe taken out of the Friendship II. I call your attention to a hole here appearing in the section of the exhaust pipes, Claimants' Exhibit 6, and ask you to observe the layout of the exhaust pipes and note that

Claimants' Exhibits 4 and 3 are the parts of the pipes that went out the stern. Please state if the hole which you found was in the approximate location on the Exhaust pipe, Exhibit 6, as the hole which is about $4\frac{1}{2}$ feet from the read end of that piece of pipe?

A. Is this pipe laying now the same as it was
855 laying in the ship?

Q. Yes, sir. ✓

A. This is the forward end and this if the aft end of the pipe (indicating)?

Q. Yes, sir.

A. Well, this piece here would come under the dining-room floor.

Q. Witness refers to the forward end of Exhibit 6.

A. Now how are these marked—1, 2 and 3?

Q. Well, Captain, the order in which they are laid is this: this one is the starboard pipe, and this (indicating) connects with it, and this section (indicating) comes right on back to that end and is then connected to this end (indicating), and then goes on out through the stern.

A. All right, as near as I can figure this is the hole that was repaired.

Q. Was there a sleeve repaired?

A. Not on the after-hole; this hole (indicating) here.

Mr. Parmer:

Referring to the hole on the forward end of Exhibit No. 6 as the after-hole.

A. (Continuing answer) The after hole that was in the exhaust pipe when Mr. Knollar fixed it.

Q. What is your recollection as to what he did to that piece?

A. It was all wrapped up so that I couldn't see exactly what he did to it; the only thing I can tell you is what they told me they did to it, and I don't think there is any

man who can tell you exactly what they did unless he stood right over them.

856 Q. What did you pay for having done to that hole?

A. I paid for repairing the exhaust pipes.

Q. What kind of a repair to that hole did you pay for?

A. Metal.

Q. Where was the forward hole that you found in the exhaust pipe?

A. The forward hole was right about in this piece here; it may have been that pet-cock as near as I can judge; that there was under the dining-room and this was just before you got to the floorboards; it was right along in here somewhere (indicating).

Q. Is that little hole about six inches from the forward end of Exhibit number 5 the forward hole?

A. Yes, sir.

Q. What kind of a repair did you make to it?

A. When I saw it this sleeve was over it and around it and it was passed by the Underwriters.

Q. Now the day that was making water and you discovered another hole in the pipe after Knollar had made these repairs, where was that hole?

A. That hole was after of the dining-room, about mid-ship of the bathroom, under what we call the hatch that we raise up.

Q. Do you recognize a hole in this pipe, Exhibit 6, in a similar location?

A. It is in a similar location to the one that I have reference to, sir.

857 Q. Captain, please state whether or not while you were in command of the Amity for Dr. Adams, if he had it put on the market for sale?

A. It was on the market for sale before I took her. When I taken the boat I was to put her in condition. When I sent my engineer into the engine-room we found every cylinder had bursted, rust had accumulated and it

had corroded the cylinders; we ordered new cylinders put in, rings and pistons. All of this had to be done to put her in A-1 shape. I think the bill was around \$3800.00 to put her in shape. Now, under my agreement with Dr. Adams if the boat was sold while I was in command, of it I was to receive a 5% commission on the sale of the boat. This was to protect me in case she was sold during the season when I could charter. Our charter agreement was that after the expenses of the charter were taken out we were to divide 50/50 the remaining proceeds of the charter.

Q. All right, do you recall having had any prospective purchasers come aboard and examine her?

A. About ten or twelve a week toward the latter part of the season.

Q. State whether or not Mr. Henry C. Yeiser came aboard for the purpose of examining her, Mr. Yeiser being the gentleman who later did purchase her?

A. I was introduced to a gentleman on board the boat as Mr. Yeiser; he was introduced to me as Mr. Yeiser. We had a talk about the boat and he asked me the condition of the boat and I told him the whole truth
858 about the boat.

Q. Captain, what did you tell him was her condition?

A. I told him that I thought I had— on the starboard getting into Caesar's Creek and that it needed straightening; that it had a few soft planks aft that might need replacing, and he says was there anything else and I said she ought to have a new port exhaust pipe.

Q. Did you see Mr. Yeiser after that?

A. No, sir.

Q. Do you recall who came aboard with Mr. Yeiser?

A. No, sir, I wasn't introduced to them and I couldn't say who they were, but I understand it was some of the crew, but I don't know; I can't swear to it.

Q. You say someone did introduce this gentleman as Mr. Henry C. Yeiser as a prospective purchaser of the boat?

A. He said Mr. Yeiser; he didn't call no first name.

Q. Was the boat open to the inspection of the engineers or crew of the man who was interested in buying her?

A. Yes, sir.

Mr. Mershon:

That is all.

Cross Examination.

By Mr. Parmer:

Q. Now, Captain Archer, that hole that you discovered in Exhibit 6, in the port exhaust pipe—I mean the hole that you discovered after the repairs were made—just what did you do?

A. The engineer went in there and wrapped
859 it with tape and bound it over with copper wire,
sir.

Q. Did you see him do it?

A. I was standing up and I glanced at him once or twice; that is all; I didn't get down and help him.

Q. You saw the tape and the copper wire?

A. Oh, yes; I saw the tape after it was finished because—

Q. So you know it was tape and copper wire?

A. I know it was tape and copper wire that he put on there.

Q. Do you know when he did that?

A. Along about March, the first part of March.

Q. The first part of March?

A. Yes. I was under charter to Mr. Dick, Mr. Adolphus Dick.

Q. And the year was 1935?

A. 1934 as I recall it.

Q. 1934?

A. Yes, sir.

Q. Was that a temporary repair?

A. Yes, sir.

Q. You were operating the boat while it was under a temporary repair?

A. Yes, I had to finish my cruise.

Q. Had to do what?

A. Finish my cruise. I wasn't at a place where I could get it repaired properly.

Q. Did you come back to Miami after the cruise, was over?

860 A. Yes, sir.

Q. Did you do anything about—

A. No, sir.

Q. You understood that I was going to ask you if you did anything about making a permanent repair of this and your answer was "no"?

A. No, sir, I didn't.

Q. Was it because the repair might have been expensive?

A. Well, it was this way; if I had got a charter for it I would have had another patch put on, and being as I didn't get a charter I didn't want any more expenses than I could help.

Q. And the temporary repair that you had was good enough to last as long as you thought you might be on the boat anyway?

A. Yes, sir.

Q. You didn't know how much longer it would last but it would do you anyway?

A. I figured it was good for about 60 or 90 days.

Q. Outside of this one hole that you found there what was the condition of the exhaust pipe in general?

A. Fair.

Q. Just fair?

A. I would say fair. She had been laid up so long and the man that laid her up hadn't drained water out of that exhaust pipe; if so, she was then in good condition.

Q. But you say the general condition of that exhaust pipe was only fair?

A. That is right—fair.

861 Q. I take it that that is the reason why you recommended to Mr. Yeiser that the whole exhaust pipe should be renewed?

A. I recommended that it should be renewed, yes.

Q. I say that is the reason that you recommended it to Mr. Yeiser?

A. Because I thought it wasn't safe.

Q. Because you thought the exhaust pipe as a whole—

A. Wasn't safe.

Q. Wasn't safe?

A. It would break out again.

Q. Wasn't safe?

A. Yes, sir.

Q. Do you mean that you might have made a permanent repair to that hole which would last but the exhaust pipe in other places might break down?

A. That is it exactly.

Q. And that is what you mean by it being in fair condition?

A. Fair; it wasn't in good condition; it was just fair.

Q. It was in fair condition and by that you mean that there was a likelihood of it breaking down in other spots?

A. Yes, sir.

Q. You gained your knowledge of that by being on the vessel from November to May, I think you said?

A. Yes.

Q. At what period did you become aware that that exhaust pipe was in that fair condition?

A. When I first went aboard of her, sir.

862 Q. You made an inspection of her then, did you?

A. Yes, sir.

Q. At that time you observed that the exhaust pipe was in this fair condition but it was liable at any time to

break down in different spots; you observed that, didn't you?

A. Let's get this straight, sir.

Mr. Parmer:

Let the question be repeated so that the witness will understand it.

(Preceding question read by the Reporter as above recorded.)

A. Yes, and I reported to Dr. Adams on it that I thought the exhaust pipe would last that season but I would recommend that he replace it for the next season.

Q. I understand your recommendations, sir, but what I want to know is about your observations. I want to know whether when you went on the boat in November you observed that this exhaust pipe was in such a condition which you called fair, and at that time you understood that the exhaust pipe was in such a condition that it would break down and develop holes?

A. To answer that question I would say this: That I knew that the exhaust pipe would not last over one season; I didn't think so in my opinion. Of course I can't give an opinion on a piece of pipe—you can take a piece of pipe on board, and of course the iron rust and the salt water, and that usually forms a condition where it eats things up and—

Q. Of course, the mechanism of a vessel is
863 subject to wear and tear?

A. Yes, sir.

Q. And it is bound to wear out at some time. I understand that.

A. Yes.

Q. Now what I want to know is whether when you went on the boat in November your opinion of this exhaust pipe, gained from your observation, was that it

might last the full season, but that there was a defect developed that might make it break out in holes before the season was ended?

A. Well, I wouldn't say that. I would say that I thought it would last the whole season and next season it would have to be renewed, yes.

Q. I believe you stated before—if not, you correct me—that you suspected that this exhaust pipe might develop holes at any time?

A. After I found that one down aft, yes, sir, but not until then; but after I found that one down aft I was careful and mighty careful; when I found that was hole then I was mighty careful and I suspected the whole pipe.

Q. You say that because you found one hole in the exhaust pipe you suspected the whole pipe?

A. Yes, sir, the whole pipe because you can never tell where they will break out the second time and when.

Q. Hadn't you already found two holes in the exhaust pipe?

A. Yes, sir.

Q. You had repaired them?

A. Yes, sir, up forward there.

Q. Up forward?

864 A. Yes, sir.

Q. After you found these did you suspect the whole exhaust pipe?

A. No, sir, because I sent my engineer in there with a hammer to tap that exhaust pipe to find weak spots.

Q. You did?

A. Yes, sir.

Q. I want to understand you. When you found a hole or holes in an exhaust pipe such as we are dealing with here, do you suspect that there is something dangerous with regard to the pipe as a whole?

A. Nothing dangerous except to—

Q. I meant to say this: When you find two holes in an exhaust pipe like that do you suspect the condition of the rest of it?

A. That is the reason that I recommended to Dr. Adams to renew the pipe.

Q. When you found these two holes which you had repaired at Mr. Knollar's you say that you did suspect then the condition of the pipe as a whole?

A. Why, certainly; it is the same with anything an automobile or anything.

Q. What did you suspect with regard to it?

A. I didn't know where she was liable to break out.

Q. Did you make any test of it to find out whether it was as a matter of fact weak?

A. No, sir, I didn't; I sent the engineer under
865 there to make the inspection.

Q. You sent him under?

A. Yes.

Q. What did he report to you?

A. He reported that she was solid.

Q. That she was solid?

A. After that second hole.

Q. You say you sent him down after this hole had developed at the other end?

A. No, sir.

Q. All right, what time?

A. After Mr. Knollar had patched the two holes at his place, then I sent the engineer down to tap that line to see if we had any more holes needing repairing, and he reported that she was solid and didn't need no repairs.

Q. There were no other holes that he could find?

A. No other holes.

Q. Did you conclude from that that the pipe was in good condition?

A. That it was in fair condition and would last the season out.

Q. What do you mean by fair condition?

A. Fair condition is that she would not be required to be renewed that season.

Q. What tests did you say you had your engineer perform to indicate that that pipe was in fair condition?

A. I will liken that to an automobile tire.

Q. All right.

866 A. You might say an automobile tire is worn but it is in fair condition. You might say "it will run me 2000 miles more", and it might go 6000 miles and then she blows out.

Q. Well, did the engineer report anything to you from which you gathered that the pipe was only in fair condition?

A. He reported to me that she was solid; that the pipe has got two holes in it, so you couldn't call that good condition.

Q. The pipe had two holes in it at the time which had been repaired?

A. Yes, sir.

Q. What did the engineer report to you with regard to the rest of the pipe which indicated to you that the pipe was only in fair condition?

A. He told me that he had found no more soft spots in it; that he had tapped it down the line and that she was in fair condition.

Q. In fair condition?

A. Yes, sir.

Q. And by fair condition you have already stated that you understood that there was a likelihood that the pipe would last the rest of the season and would not last longer?

A. That is what I figured, yes, sir; I might have been wrong but that was my opinion.

Q. That is what you understood?

A. Yes, sir.

867 Q. And this testing of the pipe by your engineer took place just after Knollan completed the job?

A. Just after Mr. Knollar completed the job, yes.

Q. And Mr. Knollar completed the job when?

A. The latter part of December, because the Insurance Adjuster came aboard just after New Year's and examined the patches and passed on them and examined the exhaust pipes and passed them.

Q. A pipe which is only going to last the rest of the season, such as this one, and which will not last longer, is it thinner than other pipes; is that the reason?

A. I can't tell you because I am not an engineer or pipe-man, but I know this: that a piece of pipe in a boat—that one piece will spring a leak and the other piece will be good for years, especially a pipe that water runs through.

Q. I want you to explain what you understood when you formed the opinion that this pipe was in fair condition. That is what I want to know. Did you intend by that that the pipe was only in fair condition and would not last as long as another one because it was worn and thinner than originally?

A. Why certainly.

Q. That is what you intended?

A. Well, it was worn thinner in spots I will say.

Q. All right.

A. Yes, sir.

Q. You were fully aware of that in January?

A. Yes, in January.

Q. Throughout the month of January you
868 were fully aware of that, were you not?

A. I was aware of it; that the pipe had been repaired and I thought that it was safe to put passengers on that boat; if not, I would not have put them on there.

Q. That is another matter. I asked you whether you were fully aware throughout the month of January that this pipe was in that fair condition which you have described?

A. I thought it and I still say I thought it was in fair condition; I don't say it was in good condition but it was in fair condition.

Q. But have no mistake about it, sir—by fair condition you understood that the pipe was somewhat worn and thinner?

A. It was bound to be.

Q. That is what you understood?

A. You leave any pipe for months and—you understand that.

Q. Never mind what I understand. That is what you understood?

A. Sure.

Mr. Mershon:

The witness has not finished his answer before he was interrupted.

The Court:

Read the question.

(Thereupon the preceding question was read by the Reporter as above recorded.)

The Court:

Have you finished your answer?

The Witness:

I think so, yes.

The Court:

You may proceed.

(By Mr. Parmer):

Q. Now were you always careful, Captain Archer, to tell other purchasers—I mean other than Mr. Yeiser—about the condition of the exhaust pipes as you knew them to be or understood them to be?

A. If they asked me, yes. If anyone asked me about the condition of the boat I would tell them the truth about it.

Q. Do you mean that they would have to come out and say, "How are the exhaust pipes?"

A. No, but if they asked me did I know if there was anything else wrong with the boat I would tell them.

Q. And you think that is right, do you not?

A. I certainly do.

Q. Well, now if a person would come around and say "What is the condition of this boat?", would you start from the top and go to the bottom and tell him all of the things that were wrong with the boat, and included in that you would have the exhaust pipes?

A. The way the question was brought up was: he was asking me about the boat and I told him that the boat was the smoothest running boat I was ever on; that it was the easiest handled boat I was ever on for a houseboat, that there was absolutely no vibration in the engines at all, and "I know that anyone buying her will get their money's worth." The question was then put to me: Is there anything wrong with this boat that you know of, and I had to say, just as I told him, what I thought was wrong.

Q. Did you say that in dealing with a prospective purchaser of that vessel at the time that you
870 were having these various prospective purchasers on that boat, that is, that it was only when they asked the specific question "Is there anything wrong with the boat?", that you told them about the exhaust pipes?

A. Yes, because if they didn't ask me whether there was anything wrong with them, why I wouldn't never say a word.

Q. That is good salesmanship?

A. No, it is not good salesmanship; it is just keeping quiet.

Q. Of course if they did ask you then you would always tell them?

A. I would have to, because they would find it out later.

Q. At the same time you would not, in dealing with any of the other purchasers, mislead them in describing the condition of the exhaust pipes, would you?

A. Absolutely not.

Q. Then you would not tell them something with regard to the exhaust pipes and then leave out what you understood to be the real condition of them?

A. Certainly not.

Q. If you did that you would be very much surprised to know it, would you?

A. If I had done that?

Q. Yes.

A. Left out anything?

Q. Yes.

Q. Captain Archer, is that your signature?

871 A. I will tell you in a second.

Q. I asked you if that was your signature?

A. Yes, that is my signature as near as I can judge. I do that kind of writing. I am no expert but I think it is.

Q. Well, do you remember, Captain Archer, on January 27, 1934, writing a letter to William in New York with regard to the sale or proposed sale of the yacht Amity?

A. No, I dictated it to a stenographer.

Q. Do you remember sending out that letter to a number of brokers?

A. I did.

Q. And in those letters you endeavored to describe the vessel?

A. Yes, sir.

Q. And in that letter you explained—

A. I said that the boat was in good condition, that the engine had been overhauled.

Q. And in endeavoring to describe the vessel you endeavored to set forth the facts as you understood them to be?

A. Certainly.

Q. And without withholding from them pertinent information?

A. I might not have went into details about certain little things but I gave them the gist of the whole thing.

Q. But you did not seek to withhold from these brokers and prospective purchasers information which was of some importance to them?

A. Not that I know of, sir.

Q. Now in regard to the *Amity* do you remember that you stated on January 27, 1934, in that letter, "She is in better condition at the present time than at any other time"—

872 Mr. Mershon:

We object to that, Your Honor, on the ground that it is an attempt to read into the record a letter which has not been put in evidence.

Mr. Parmer:

I expect to offer this letter later. At the present time I am testing the recollection of this witness on cross-examination. That is what I am doing now, and I will identify the letter later.

The Court:

You can offer the letter in evidence.

Mr. Mershon:

He can ask him if he wrote it and then offer it in evidence.

(Legal discussion off the record.)

The Court:

I don't think he can offer it in evidence on cross-examination.

Mr. Mershon:

We have no objection to filing the letter in evidence after the witness identifies it, even on cross-examination.

The Court:

It is up to Mr. Parmer as to whether he wants to pursue that course.

(By Mr. Parmer):

Q. Look at that letter and tell us whether you wrote it. Just answer the question.

The Court:

Did you write that letter?

A. Well, sir, no. I told my wife the condition of this boat and I asked her to write a letter to all of the brokers and she did it herself.

873 The Court:

Did she sign that letter?

The Witness:

I think that is her signature, instead of mine on that letter; she has a right to sign my signature, because I gave her that privilege.

Q. Were you aware of that when I showed you the signature for the first time?

A. I knew it was W. D. Archer you understand and that is my signature, W. D. Archer.

Q. Didn't you say that that looked like your handwriting?

A. Yes, but now that I have seen it again I don't think that is my handwriting; that looks more like my wife's writing. I can sign my name in a minute and you can tell in a minute if you desire.

Q. Well, Captain Archer, do you really say that this is not your signature?

A. I wouldn't swear it wasn't my signature but I don't think it is; I think my wife wrote it, and it looks more like her's than mine.

Q. Let's get to it from another viewpoint. Did your wife typewrite these letters?

A. Yes, sir.

Q. Your wife can handle a typewriter?

A. Oh, yes; she is the head of the Commercial Department at the Ponce de Leon.

Q. Are you in business yourself?

A. No, sir; I am nothing but a sea captain out of a job. I have been sick for the last 18 months
874 and that is the reason I haven't been on a boat.

Q. Was your wife familiar with this boat?

A. Yes, she knew this boat from A to Z.

Q. Had she travelled on it?

A. No, but she was aboard it many, many times. During the Christmas holidays she was over there every day for lunch with me.

Q. Did she know how long the gig was?

A. I told her told.

Q. How long did you tell her it was?

A. About 13 feet or something like that.

Q. You told her a lot of the things from which she composed this letter?

A. Certainly, but as far as putting the letter into type I never did that. I just tell her the things I want written and she writes it.

Q. You signed some of these letters yourself, didn't you?

A. I don't remember whether I did or not. I might have signed some of them and she might have signed the whole bunch.

Q. Now with regard to the exhaust pipes, you told her what to say about them?

A. I told her to say that the exhaust pipe was in good condition as far as I can recall; I don't remember exactly the words I told her.

Q. Did you tell her to say that the exhaust pipes were of exceedingly heavy copper?

875 A. Not that I know of, but the tanks were of exceedingly heavy copper.

Q. I am asking you about the exhaust pipes?

A. No, sir.

Q. Did you tell her to put in the letter that they were of exceedingly heavy copper?

A. Mister, I don't think so, but I can't remember that far back.

Q. Is it possible that you may have had the idea in your head in January of 1934 that the exhaust pipes on the Friendship II were of exceedingly heavy copper?

A. I couldn't have because I know they didn't or wasn't.

Q. You have read this letter now?

A. I have.

Q. You say that phrase used in that letter, did you not, with regard to the exhaust pipes on the Friendship II?

A. As near as I can recall by reading that letter it says "new exhaust pipes", and there was no new ones put in.

Q. Were those statements contained in that letter which you have just read true on January 27, 1934?

A. Except the statement about her exhaust pipes, and I know they were in good shape. The reason—the rest of that was all true as near as I know.

Q. Now would you mind writing your name for me with a pen?

A. I will be glad to. (Witness complies.) I will write that again because that "D" is bad. Now that
876 is my signature.

Mr. Parmer:

Now, may we have both marked in evidence, first the letter?

Mr. Mershon:

No objection.

The Court:

You have no objection to them being offered in evidence on cross-examination?

Mr. Mershon:

No, Your Honor.

The Court:

All right; let them be filed in evidence.

(Thereupon the letter and sample of signature of the witness were marked as Petitioner's Exhibits 7 and 8.)

Q. What is your wife's first name?

A. Sue.

Q. Sue?

A. Susan.

Q. Have you ever dictated any letters?

A. Very few.

Q. Have you observed in those letters that you have dictated that in the lower lefthand corner it is customary to make a notation as to who dictates it and who types it?

A. Yes, I have seen that on other letters, but I don't

think it was ever on mine when Sue and I wrote them together.

Q. Do you notice this symbol in the lower lefthand corner of this letter "WBA"?

A. Yes.

Q. By "N". Who is "N"?

A. Susan Norwood Archer, my wife.

877 Q. That is the symbol that stood for the person who took the dictation?

A. It refers to the one who wrote the letter.

Q. You were the one who dictated it?

A. I just told her the gist of it. I never did much letter writing, and she would always revise them.

Q. Do you say that you didn't tell her to put in the letter that the exhaust line was of exceedingly heavy copper, but that she made that up herself?

A. No, I don't say that. I would say this: That when we were talking about the tanks and she asked me about the tanks I said "exceedingly heavy copper", and I told her that the exhaust line was in good condition.

Q. Did you tell her it was in good condition?

A. I told her that it was in good condition, and I told everybody it was in good condition.

Q. In January?

A. Yes, because she had just been repaired.

Q. Did you tell your wife to put in this letter that she was in good condition?

A. I can't remember that far back telling her what to put in any letter, and I don't believe you can tell me what you put in your letters that far back either.

Q. In other words, you don't remember now how it came about that in this letter the statement is contained, "The exhaust line is of exceedingly heavy copper?"

878

A. No, I do not.

Q. And it might be, for all you remember about it, that that is what you told your wife to put in the letter?

A. It might be but I don't think it was.

Q. Well, now, will you tell us when you were first asked to be a witness in this case?

A. I will be glad to. I don't think I have anything to hide at all.

Q. I don't want you to feel that way, sir.

A. Mr. Mershon asked me—Mr. Mehrtens asked me, was I the captain of the Amity and I told him yes. I can't tell you the date.

Q. About how many months ago?

A. Quite early. I couldn't tell you that.

Q. Was it a year ago?

A. Not a year; I don't think it has been a year.

Q. At the time that he asked you was your memory clear on the events concerning which you have testified here?

A. No, they were not.

Q. What part of the things that you have testified to today could you remember at the time when Mr. Mehrtens first approached you?

A. Practically all of it, but there were quite a few things that I had to refresh my memory on.

Q. What things?

A. I didn't know whether Mr. Knoller had put
879 in a plug or whether he had put in a sleeve.

I couldn't remember and naturally I went over to see what it was, and when I went to Mr. Knoller I asked him. I can remember things like that. If you can you have more brains than I have, because I can't remember such things.

Q. Now tell me, Captain Archer, a boat has a lot of pipes on it, doesn't it?

A. Yes, sir.

Q. Pipes for water and pipes for exhaust?

A. Yes, all kinds of pipes, gas pipes, garbage pipes, drain pipes from the sink and just all kinds of pipes.

Q. Captain Archer, you say that Mr. Yeiser came on board the Amity as it was then and he was accompanied by some of the crew?

A. No, sir.

Q. Didn't you say that on direct-examination?

A. No, sir; I said there were two other fellows there; I don't know who they were, and he had never met his crew at that time.

Q. There were two other fellows there?

A. Yes, but I don't know who they were. I had never seen Mr. Yeiser before and I never saw him since, and I wouldn't know the man if I saw him today.

Q. Do you know Mr. Lindstrom?

A. Yes, sir.

Q. Don't you remember that he was there?

A. Mr. Lindstrom was never aboard with Mr. Yeiser that I know about. He might have been
880 and I didn't know it was Mr. Yeiser.

Q. Somebody introduced Mr. Yeiser to you; didn't they?

A. Yes.

Q. Who was that?

A. Mr. Fisher.

Mr. Parmer:
That is all.

Mr. Mershon:
The claimants now rest, concluding their rebuttal testimony.

881 Thereupon: CAPTAIN FREDERICK ROBERTS
was recalled by the Petitioner, and having been
previously sworn, testified further as follows:

Direct Examination.

By Mr. Parmer:

Q. Captain Roberts, were you present in Miami at
or about the time when it was contemplated purchasing
the Amity?

A. Yes, sir.

Q. Who had charge of the purchase of that vessel?

A. I did.

Q. In what way?

A. Well, in paying the money for it.

Q. Did you have anything to do with it before the
money was paid?

A. Well, I just don't know what you mean by that,
but I was to look the boat over with some broker by
the name of Mr. Lindstrom, and he gave me the idea
that the boat was a fine boat and she looked good to
me and she was good.

Q. Did you talk to Mr. Fisher at any time with re-
gard to the purchase of the Amity?

A. Mr. Fisher talked to me.

Q. At the time that you talked to him had you had
under consideration already the purchase of the Amity
or did that come from Fisher?

A. Mr. Fisher came down and recommended the boat
to me. You know he is a broker or is supposed
882 to be and he said that he heard we were in
the market for a boat.

Q. At the time that Mr. Fisher came to see you had
you heard from any other broker with regard to the
Amity?

A. Yes—no, sir.

Q. Did you thereafter hear from any other broker with regard to the Amity?

A. No, I didn't fool with any broker. We had a little talk down at the Royal Palm Dock and I asked him what the Amity was and he told me that the Amity was a good little boat—

Q. Don't go into that. I want to know who you dealt with in negotiating the purchase of the Amity?

A. I dealt with Captain Lindstrom.

Q. Did you deal at all with Mr. Fisher after he saw you?

A. No, sir.

Q. Was Mr. Yeiser on the Friendship I at the time?

A. Yes, sir.

Q. Did you at any time go on board the Amity?

A. No, I went aboard with Mr. Yeiser and Captain Lindstrom.

Q. At that time did you inspect the boat?

A. Yes, we went through it. The boat had been laid up and naturally you would know we would have to do a lot of work.

Q. Did you see Captain Archer on the boat at the time?

A. No, sir.

Q. Who showed you through the boat?

A. Captain Lindstrom.

Q. At that time were you acquainted with
883 the movements of Mr. Yeiser, if so, to what extent?

A. In every way, in his business and in the business on the boats.

Q. Were you acquainted with the callers that he had who came on board the boat to see him?

A. Not all of his callers, no.

Q. Were you acquainted with the times when he went ashore?

A. Pretty close to it, yes.

Q. Well now do you know at that time when he went ashore and when people came to visit him?

A. He didn't go ashore; he had been sick and we had a nurse with him; he had been wanting to go and look at that boat, but he wasn't able to go at that time, but they did take him out walking before he was able to go and look at that boat.

Q. That is what boat you took him to see?

A. I taken him up to see a little boat by the name of Coconut and then we went up and looked at the Amity.

Q. On the same day?

A. Yes.

Q. Do you know whether he was ashore on any other occasion before that when he went to look at the Amity?

A. You can rest pretty sure that he wasn't, because he wasn't able.

Mr. Parmer:
That is all.

Mr. Mershon:
No questions.

884 Thereupon CAPTAIN J. N. PATTON was recalled by the Petitioner and testified further as follows:

By Mr. Parmer:

Q. Captain Patton, the spring of 1934 were you acquainted with the vessel Amity which afterwards became the Friendship?

A. I made a survey of her in the fall of 1933.

Q. What did you find as a result of that survey?

Mr. Mershon:

We object to the witness referring to that paper unless it is necessary to refresh his memory.

Q. Tell me, Captain Patton, is it necessary for you to refer to this paper in order to refresh your memory?

A. If you want the whole situation as to what I found wrong with it, this is a copy of my report to the insurance company.

Q. Did you make that survey at that time in connection with an inspection for the insurance company?

A. Yes, sir, and here is my report, the whole business. (Witness reads report dated December 9, 1933, as follows):

Q. Do you mean to say that you personally
885 ascertained that that work was done at the time
 you made that report?

A. Yes, and this is my report to my company to that effect.

Q. Did you make any survey thereafter of the Amity?

A. Yes. She struck a log and I was called to Fort Meyers to look at the repairs to the bottom and the struts, and while there we found some planking right over the propellers that was rotten inside on account of the ballast and they were renewed at that time.

Q. When was that?

A. That was the spring of 1934.

Q. Did you make any inspection of the exhaust pipes at that time to see whether the work had been done?

A. No, sir; this inspection was on account of the bottom damage.

Q. Did you make any other surveys of the vessel after the one in December?

A. No, not for full coverage, that is, to go all over the boat.

Q. After the repairs were made in Knoller's yard did you examine the rest of the exhaust pipes to see what condition they were in?

A. I had examined them before when it was reported that they were bad, and the only thing I found was two holes.

Q. Besides those two holes what was their condition?

A. The pipe leaked all right from the outside.

Q. Did you put it down as a good risk?

A. After it was fixed.

Q. Did you ever learn of any other trouble
886 with respect to exhaust pipes thereafter?

A. Not until yesterday when one of the boys out there told me that he discovered a small hole at a later date under the stateroom, but that wasn't visible when I looked over the boat?

Q. That was in December, 1933?

A. Yes.

Q. Would you say that in December, 1933, and January of 1934 are the only times that you went on board the vessel to make a survey?

A. Yes, but in 1934 I was on board on a damage job.

Q. In 1934 it was just a damage job?

A. Yes, sir.

Q. To find out the extent of the damage and to report it to the insurance company?

A. Yes.

Q. At that time you did not make any survey of the pipes?

A. No sir.

By Mr. Mershon:

Q. Captain, will you let me see the report which you read covering your survey made in December, 1933?

A. (Produces paper.)

Q. This letter from which you read is dated January 3, 1934, and that refers to your recommendations of De-

December 9, 1933. Do you have your recommendations of December 9, 1933, there?

887 A. No, I do not have them with me.

Q. Where is the copy of that letter?

A. I do not know.

Q. Do you have it in your records?

A. I looked all over for it last night. When I check up on a boat for an insurance company I fill in a rough copy like this and make the recommendations on the back.

Q. May I see that?

A. Yes, but I doubt if you can read it. Here is a letter that might have some bearing on it.

Q. I am asking you particularly about the list of recommendations as part of your survey of December 9, 1933. I am asking you if in that letter of January 3, 1934, where you referred to the date of December 9, 1933, you meant that your recommendations were made on December 9, 1933, or that you made your survey on December 9, 1933?

A. I made my survey and recommendations on the same day.

Q. Did you send those recommendations off in the form of a letter?

A. Yes.

Q. Have you made any effort to procure that original letter or a copy of it?

A. I didn't know anything about it. I wasn't called on this case until yesterday.

Q. Do you mean to say that this case had not been discussed with you until yesterday?

888 A. Not until day before yesterday.

Q. Did Mr. Coleman, of Loftin, Stokes & Caulkins, confer with you at any time prior to yesterday concerning the survey that you made of that boat or what it showed?

A. No, sir.

Q. When was the first time Mr. Coleman or Mr. Parmer or any other lawyers or persons talked to you about the survey you made of that boat on December 9, 1933?

A. I think it was you who first spoke to me in your office. I don't remember the date but it was some months ago.

Q. Who else?

A. Nobody until I was called in to measure that cabin.

Q. And that was yesterday?

A. Yes, sir.

Q. Have you been subpoenaed in this case?

A. No, sir.

Q. Having testified that you talked to me—you talked to no one else—

A. No lawyers. I talked around the docks and listened around the docks, and that is all I know about it. When an insurance company sends me aboard to check up a boat for insurance purposes that which is in that yellow paper is what that want, they want to know what is wrong with the boat.

Q. Now I would like to have that yellow paper which read into the record marked for identification purposes.

A. I want that copy; that is the only record
889 I have for my file.

Q. We will take care of that. We will mark it Claimants' Ex. 13.

(Witness ~~excused~~.)

890 Mr. Mershon:

The claimants jointly and severally move to strike the testimony of the witness, Seth Stetson Walker, the chemist, as to the amount of carbon monoxide gas which his analysis showed was in the specimen which he testified was taken through a tube from the floor of the double after-cabin after the motors had been run two hours or more in connection with the tests made upon

the yacht, Friendship II, in August, 1936, at Fort Meyers, Florida, upon the following grounds:

First, said testimony is incompetent; second, it is irrelevant and immaterial; third, it has no probative value; fourth, the conditions under which the alleged tests were made are not similar to and omitted many important factors existing in the situation in, about and upon the yacht Friendship II on the night of March 1st and the morning of March 2nd, 1936, when the claimants received their injuries. More particularly said dissimilarity being, among other things, as follows:

(a) It affirmatively appears from the undisputed evidence that the yacht Friendship II had been operated with her motors running, with the windows closed and the outside hatches and ports closed for two hours or more on the evening of March 1, 1936, up to about 9:00 P. M. and that thereafter, about 7:00 o'clock A. M., the motors operated for an additional hour and a half to an hour and fifty minutes while the boat was in motion before the young ladies were discovered, so that the carbon monoxide forced into the stateroom by the operation of the motors from 7:00 o'clock A. M. was in addition to such carbon monoxide gas as it has been demonstrated would be forced into the stateroom in the operation of the boat from about 7:00 P. M. to 9:00 P. M. on March 1st, whereas the alleged tests taken at Fort Meyers involved the operation of the motors for a single period of two hours to two hours and twenty minutes, as the case may be, beginning with the bilge free and clear of all gases at a time when the motors had not been previously operated for three or four days.

(b) In the test taken at Fort Meyers there is no evidence of any head wind or any other wind which would affect the storage or the amount of the gases in the bilge

of the yacht, whereas it has been shown that on the night of March 1st and the morning of March 2nd, 1936, there was a head wind blowing against the vessel which, with the motion of the vessel in the opposite direction, may have been and was a factor in the collection of gases in the after stateroom from the bilge of the vessel.

(c) In the tests taken at Fort Meyers no consideration was given nor effort made to include in said tests the small hole upon the forward part of the port exhaust pipe, Exhibit No. 6, which was found in said pipe by the witness Roderick on the day of March 2, 1936.

(d) That in the tests made at Fort Meyers conditions were not similar to the conditions existing in said stateroom from which the injured claimants were taken on the morning of March 2nd, in that no allowance was made for the cubicle content displacement in the stateroom of the bodies of the two claimants, nor was there
892 taken into consideration the fact that the claimants themselves had breathed the oxygen in the air in the stateroom at the time that they were injured, leaving more room in the atmosphere of said cabin by the absence of oxygen for the injection of carbon monoxide gas than existed at the time the tests were made at Fort Meyers.

(e) It affirmatively appears that the tube which was placed in the stateroom at Fort Meyers, and through which the specimen of air was drawn from the after-stateroom for the purpose of analysis, was resting on the floor of said stateroom, whereas at and prior to the injury of the claimants in said stateroom the heads of the respective claimants were near the ceiling while they were standing and were on the bunks or beds several feet above the floor when they were found, and were nearer to a heavier mixture of said carbon monoxide gas in said stateroom.

due to the fact, of which the Court will take judicial notice, that carbon monoxide gas is lighter than air and tends to rise and gather toward the ceiling of the stateroom.

(f) The evidence of the dimensions upon which said chemist, Seth Stetson Walker, based his percentage of carbon monoxide, that is to say, the alleged cubicle content of the stateroom upon which the chemist's said result is based, were and are incorrect and not the true dimensions of said stateroom, and the cubicle content used by said chemist has been admitted as not being the cubicle content of said stateroom at the time and place
893 when the claimants were injured. It does not appear from the testimony concerning such tests upon which said chemist's result is based that the specimen of air or mixture of atmosphere taken from said stateroom or analyzed by said chemist was a true specimen of the atmosphere in said stateroom.

(g) It affirmatively appears from the testimony of the witnesses for the petitioner that there is a direct conflict as to the time for which the motors of the vessel were run and operated in connection with the test of the air inside of said stateroom.

(h) It wholly fails to appear that the physical conditions and the other portions of said boat were the same when the test was made as such conditions existed at the time claimants received their said injuries.

It does not appear that the climatic conditions when said test was made were similar to the climatic conditions existing at the time the claimants were exposed to said carbon monoxide gas and received their injuries.

(i) It affirmatively appears that when the test was made the door opening from the bathroom was a solid

door, with no ventilation into said stateroom, and that said door was closed so as to keep out of said stateroom the gas and fumes coming from the bilge into the bathroom and coming from the bilge through the opening in the bathroom hatch into said bathroom, whereas at the time

894 the claimants were exposed to said gas and received their said injuries, said bathroom door was open and the fumes from said bilge had access into the bathroom through the hole in the bathroom hatch and the vents in the bathroom wall, and thence into the stateroom in which claimants were found.

(j) It has not been shown that the presence of carbon monoxide gas in said stateroom would be in similar quantities and of similar effect where the motors were operated while the vessel was moored alongside the shore as when the motors were running and the vessel moving through the water.

The Court:

We will take an adjournment until tomorrow morning at 10:00 o'clock.

(Thereupon adjournment was taken to 10:00 A. M., October 15, 1937.)

895 Miami, Florida, October 15, 1937—10:00 A. M.

Met pursuant to adjournment.

Appearances same as heretofore noted.

Mr. Parmer:

I would like to answer the motion that was made last night.

The Court:

It does not require any argument.

Mr. Parmer:

May we put on the record certain agreements or stipulations that I have made with Mr. Mayne with regard to the St. Louis testimony.

The Court:

All right.

Mr. Parmer:

With regard to Mrs. Just I believe it is agreed that the nurse in Chicago testified that Mrs. Just showed a disinclination to talk with her relatives or talk when her relatives were present; that she showed a greater inclination to talk when only the nurse was present, and she showed a still great disinclination to talk and converse when next-door neighbors were present. Do we agree to that?

Mr. Mayne:

That is correct, except by adding that the nurse was trying to enter into conversations when she was with her as a part of her care and treatment.

Mr. Parmer:

All right. Also in the testimony of Mrs. Gross, who was Mrs. Just' mother, that she knew that Mrs. Just knew Mr. McKay socially, but Mrs. Just had never told her that she had gone on excursions on the yacht
896 Friendship II alone with Mr. McKay.

Mr. Mayne:

That is correct.

Mr. Parmer:

Now with regard to Miss Gruner. That prior to going on the boat she had been under the care of a physician, Dr. Rush, and that when she returned in March she did not obtain any medical treatment from any doctor until May, 1936, when she went to a physician who had been treating her prior to her going on the Friendship II?

Mr. Mayne:

That is correct.

Mr. Parmer:

And that that summer of 1936 she went on a visit to Michigan, to the place she had been accustomed to going in years before she went on the Friendship II.

Mr. Mayne:

And that the father and mother of Miss Grunow said that she had to go away in order to quiet her nerves.

Mr. Parmer:

Very good.

Mr. Mayne:

All right.

Mr. Parmer:

That she is not a person who has ever worked for a living, except that during the Christmas holidays prior to coming to Florida in 1935 she worked during the Christmas holiday season in a jewelry store as a clerk.

Mr. Mayne:

That is correct.

Mr. Parmer:

Dr. Kells is here and I would like to put him on at this time.

The Court:

All right.

897 Thereupon DR. PAUL KELLS was called as a witness on behalf of the petitioner, and having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Parmer:

Q. What is your full name, Doctor?

A. Dr. Paul Kells.

Q. Where do you live Dr. Kells?

A. In Miami.

Q. Where is your office?

A. It is in the Ingraham Building.

Q. Are you licensed to practice medicine in Florida?

A. Yes, I am.

Q. And for how long have you been so licensed?

A. For nearly four years; it will be four years in December.

Q. What has been your medical training?

A. Graduate of the University of Virginia Medical School in 1930, one year medical internship, which was followed by two years as Resident on the Neurology and Psychiatric Service at the University of Virginia Hospital.

Q. Since you have been in private practice have you engaged in any specialty?

A. I have engaged in the specialty of neurology and psychiatry.

Q. Here in Miami?

A. Yes.

Q. In connection with your specialization have
898 you been associated with any hospitals?

A. As a member of the Staff of Jackson Memorial Hospital and St. Francis Hospital.

Q. Now, Dr. Kells, I want you to assume as true certain facts that I am going to give you, and then I want to ask your opinion. Now I want you to assume that a young lady about twenty-four years of age, who had been an only child and who had been married and divorced, and who had had a child by that marriage, came to Miami in the fall of 1935 and was acquainted and became more acquainted with a man who was then married but separated from his wife, and that even at that time she expressed fear that her former husband might in some way regain the custody of the child which she had previously been awarded by the decree of divorce, and that while in Miami and in association with this man she went on several occasions with him on a private yacht, and the two went on excursions on such yacht, and that she did not tell her mother about such excursions; that on February 28, 1936, she went with this same man, accompanied also at that time by the owner of the vessel and another young lady, who was a friend of the young lady whom I mentioned in the first place; that the vessel left Miami on February 28, which was a Friday, and was gone down the Bay Saturday and Sunday and returned to Miami on Monday morning; that during the time that the boat was away some liquor was consumed by all the members of the party; and that on Monday morning, the vessel having proceeded from its anchorage in the Bay at about ten minutes of seven in the morning, the aforesaid
899 young lady was found in her bed and failed to arouse when called; that she was then taken from her bed and brought up on deck, and it was found that when she was taken from her bed that the sheets and bedding were wet, and that the total period from ten

minutes of seven, when the boat left its anchorage, until the woman or young lady, I should say, was removed from the bed was not over an hour and a half; that after she was removed to a place of rest on the upper deck of the vessel a doctor was called who gave her an injection of caffeine and sodium benzoate of $7\frac{1}{2}$ grains, which caused her to mumble something; that thereafter the doctor gave her inhalations composed of oxygen 95% and 5% carbon dioxide; that when she was given these inhalations she would turn her head aside, so that the inhalations would have to be pressed upon her; that during the time the doctor was in attendance upon her he observed that she pulled the bed-clothing over her shoulders to cover her bare arms; that she remained on the vessel from the time that she was brought on the upper deck until approximately two o'clock in the afternoon; that her lips were observed to be cyanosed during the time she was on the vessel; that she would not answer questions directly put to her; that during the ride to the hospital, St. Francis Hospital, in the ambulance she did talk some; that when she arrived at the St. Francis Hospital she was given medicines which have been described as being the ordinary treatment for alcoholism; that she was put in an oxygen tent shortly after she arrived at the hospital; that on the evening of the day when she arrived at the hospital she was examined by a physician who found her condition and described it to be negative so far

900 as he could determine from the examination; that it was observed, as she stayed in the hospital, that with regard to events which had happened on the vessel she said she could not remember, although at the same time it was observed and recorded that she was very talkative; that she remained in the hospital until March 7; that while in the hospital she told the attending physician she feared that her husband would regain custody of the child because he might learn of what had happened on the vessel; and assume further that she was thereafter

discharged from the hospital and went to her home in Archway Villas in Miami Beach and remained there until sometime in May of 1936, and that during that time her symptoms were as follows: she said she could not remember what had happened on the vessel; she expressed the fear that her husband would get her child; she wept very frequently; she was apathetic; she expressed herself by saying, "What's the use." On occasion she expressed the desire to do away with herself, and that she remained in that condition during the time that she was on Miami Beach and until she returned to St. Louis, which was in May.

Now, doctor, I want you to assume that this young lady was not in any way affected by carbon monoxide gas at the time that she was on the vessel, and I want to know what your opinion is with regard to whether the symptoms which I have described to you indicate to your mind any entity recognized by the medical profession as a part of mental pathology.

901 Mr. Mershon:

We object to that question upon the following grounds: First, the assumption that the young ladies were not affected by carbon monoxide gas is in contradiction of the record itself, wherein petitioner's own testimony has shown that carbon monoxide gas actually got into the room, in some amount and degree, where the young ladies were sleeping at the time they were affected; second, the hypothetical statement omits many other undisputed factors brought out in the evidence in this case; third, the proper predicate has not been laid for the expression of the requested opinion. The question completely overlooks the diagnosis made by the first attending physician, shown in the hospital records, of the condition of the young lady referred to; and fourth, the question fails to take into consideration the fact admitted in the evidence of the petitioner that the young lady in question

was exposed to carbon monoxide fumes prior to being found in the condition described by counsel.

The Court:

Mr. Parmer, I understand your assumption that the young lady in question was not affected by fumes of any monoxide gas, but ask the witness if on the predicate laid he was of the opinion that the symptoms embodied in the question were consistent with your contention of the—

Mr. Parmer:

I was leading up to that.

The Court:

But as framed it seems to me that the incorporation of a negative monoxide poisoning feature is inconsistent with the general nature of your entire question.

Mr. Parmer:

You see, I want him to explain, if he can, whether these symptoms can be produced in the absence of any carbon monoxide poisoning, so I have asked him very carefully—excluding Mr. Mershon's assumption that carbon monoxide gas was in the room—that these
902 women were not affected by it, or that this woman was not affected by it. First I want to know whether he recognizes in these symptoms an entity known in mental pathology; and so far as carbon monoxide is concerned, your Honor, I do not know of any doctor outside of Dr. Foxworthy who has said that they were affected by it, and he said that when he saw them they showed the results at that time of former carbon monoxide poisoning. Doctor Howell said that in his opinion it was more alcoholism than it was carbon monoxide poisoning, if it was carbon monoxide poisoning at all; and Doctor Harris said that he could not express an opinion as to what

it was at the time that he saw the girls except on the basis of a history.

Mr. Mayne:

But he did say that it was not intoxication.

Mr. Parmer:

He said it possibly could be.

The Court:

As framed I think the question is objectionable in that it assumes the negative with reference to carbon monoxide poisoning.

(By Mr. Parmer):

Q. Now having in mind the assumptions that I asked you to take into consideration, have you any opinion with respect to the causation of such mental symptoms as I have described to you?

A. Yes, I have.

Q. Will you tell us what it is?

A. Such a group of symptoms could form an entity known as reactive emotional depression.

Q. Could that be caused by the events which preceded the removal of the young lady from the vessel?

A. It could have been caused by the total circumstances which you have described.

Q. Will you explain the manner in which such symptoms are produced?

A. I describe that condition as reactive emotional depression and by reactive emotional depression we recognize a group of symptoms whose outstanding feature is a slowing up of all processes, both mental and physical. By a reactive depression we mean a depression which is caused by a reaction to some set of circumstances. Now we are all reacting at all times to different stimuli; the reaction to a pleasant situation is one of joy, and the re-

action to an unpleasant situation is one of sadness. Now when that sadness arises—which everybody has suffered in their time more or less—there are two ways to meet it: one is by attacking the situation with courage and confidence; the other is to go into a state of inactivity, which method represents a technique for the avoidance of what the person thinks he is suffering. It is the choice between these two courses that we think of the will. A person who is rather strong-willed will chose the course of courage, but a person who does not want to invoke that will will go in the opposite direction. It is also known that the depressed condition is also characterized by painful ideas and painful thoughts, and that these also are brought about by a preoccupation with an unpleasant situation. We also know that these powerful stimuli, or any powerful stimulant, inhibit activity. Now there are patients who are, on the other hand, very active rather than depressed, and I recall one such patient who was elated and very active rather than depressed, 904 and I recall one such patient who was elated at the time the November storm struck, and that was a rather powerful stimulant, and during the noise and during the excitement of that time there was a great deal of calming of that person.

I believe that answers your question.

Q. Will you apply your general observations to the specific circumstances which I have asked you to assume and state to the Court in what manner those circumstances are related to the symptoms which you recognize as the entity of reactive depression.

A. I would have to assume that this woman, in common with other mothers, was fond of her child, and that judging from her previous expression of fear that she might lose the child, and even before this happened her foothold on the child was even then precarious—

By Mr. Mayne:

May I interrupt there, in order that the doctor may know something about this divorce matter and will not have the mistaken idea about it. Will you permit him to take into consideration that she filed suit for the divorce in December, 1934, in the City of St. Louis, St. Louis County, Missouri; that she secured custody of the child, with the privilege however of the father seeing the child for a period of two weeks in the summertime, and also a period of one week, alternating at Christmas-time, after the child reached the age of five years, but in the meantime he was privileged to see the child at certain times and occasions that he might desire; and that this divorce was granted one year and four months before this accident.

905 Mr. Parmer:

I would be perfectly willing to have him take your statement into consideration.

Mr. Mayne:

And that the child at the time of the divorce was a baby of just ten months old.

Mr. Parmer:

I would be perfectly willing to have him take that into consideration.

Mr. Mayne:

May he also take into consideration that when Mrs. Just was here in Miami she was in the company of her aunt who lives with her all of the time, and also a nurse, and also that her child was here with her at that time.

(By Mr. Parmer):

Q. You will take all of that into consideration, doctor, and continue with your answer.

A. (Continuing) Then we would have to say, since she was rather sure of the child's custody, that such a fear as she expressed before March 2nd or thereabouts was a morbid fear, at least a foundation for it. She had taken excursions on this boat previous to the one of February 28th, of which her aunt had no knowledge—

Mr. Mayne:

We object to that. The aunt did have knowledge.

Mr. Parmer:

As far as the answer is concerned there is no evidence from the aunt as to what her knowledge was, but there is evidence, Mr. Mayne, that the mother did not know about it.

Mr. Mayne:

That is correct; she was in St. Louis.

(By Mr. Parmer):

Q. Go ahead.

A. But on this one previous occasion she could disguise the fact that she had been on this trip, but on the trip in question such a disguise was impossible because she was brought out in an unconscious condition and had parts of this affair spread upon a hospital record, and it would be natural that the fear already present would be accentuated that the husband would regain control of the child, and it was the preoccupation with this morbid fear and other morbid thoughts that caused the reactive emotional depression to arise.

Q. Well now, doctor, would the presence of relatives have any effect on the origin or continued maintenance of that depression?

A. I don't believe I could answer that except in this way: that it is my custom, if I am treating such a patient

in the hospital, to ask the family to stay away for a period of three or four weeks or even longer, but in this particular case I could not say.

Q. What is the reason for such advice?

A. Because any member of the family will bring up strong emotional reactions; a photograph will do the same thing. We know in these cases that if you give them a photograph album it recalls emotional scenes such as of childhood and things of that sort, and will make them more depressed and retard their recovery, but with a stranger that emotional tie does not exist.

Q. What is the effect on the memory of such a reactive depression as you have described?

A. The memory will be slow, and all of these functions seem to follow the same groove and in about equal parts.

Q. Is it one of the symptoms of such a depression that the memory is affected somewhat?

907

A. It is a symptom.

Q. It is?

A. Yes, but the degree depends on the depth of the depression, naturally.

Mr. Parmer:

That is all. You may cross examine.

Cross Examination.

By Mr. Mershon:

Q. Doctor, is it possible to have an injury to the human brain and nervous system as the result of exposure of the patient to carbon monoxide gas?

A. Well, I only have a general knowledge of carbon monoxide, the facts that are well known but not very special knowledge on that subject.

Q. You made the statement white ago that "we know certain things." You mean by that the members of your particular profession?

A. Yes.

Q. That is neurology and psychiatry?

A. Yes.

Q. Don't you also know as a recognized fact that there may be serious injuries and serious results to the human brain and mind and the nervous system flowing from exposure to noxious quantities of carbon monoxide gas?

A. Yes.

Q. Now all of the testimony which you have given here in response to the questions asked is based upon
908 the assumption that there was an entire absence of any history of exposure to any carbon monoxide gas, was it not?

A. I became a little confused with the objections on that point, but that was my impression.

Q. That carbon monoxide did not enter into the question at all was your impression, was it not?

A. I would like to know how that question was finally stated.

Q. It is my understanding, doctor, that you were asked to assume that there was no exposure to carbon monoxide gas whatsoever. Was that your understanding of the question?

A. That is right.

Q. Then your answers were based upon the assumed fact that there was no element of carbon monoxide poisoning whatsoever present in the case history of the lady about whom you were asked to testify?

A. As I remember the question, it stated what entity to mental pathology would this group of symptoms remind me of, but it seems that the question of carbon monoxide at that time was left out.

Q. And that is what you understood in giving your answers, that is, that it was left out?

A. It was what entity the group of symptoms presented reminded me of.

Q. It didn't take into consideration carbon monoxide poisoning at all?

909 A. That wasn't in the question.

Q. Doctor, do you know Dr. I. H. Agos of Miami?

A. Yes, I do.

Q. What branch does he specialize in?

A. He is a general practitioner.

Q. Is he not a neurologist and psychiatrist?

A. He was up until two or three years ago but he dropped it and is now engaged in general medicine.

Q. Do you remember definitely when he dropped the specialty of neurology and psychiatry?

A. No, I do not know the date but the last directory is the 1936 directory and he wasn't listed in that as a specialist.

Q. For a period of ten years or more, however, in Miami and this vicinity he had specialized in psychiatry and neurology, had he not?

A. That is true.

Q. And he had been a consultant in that line, had he not?

A. Yes, sir.

Q. Would this condition or this entity that you were asked about or these symptoms which you were asked about, which you say constitute an entity, would they be diagnosed as a definite psychosis?

A. Yes, a definite psychosis.

Q. If the young lady in question, whom we will assume was Mrs. Charlotte Just, was found unconscious in her bed aboard the boat on the morning of March 2, 1936, and thereafter, on May 22, 1936, she had been

910 actually examined by Dr. I. H. Agos of Miami, in consultation with two other physicians, and at that time his examination revealed a very noticeable, highly emotional individual, and that she was in a state of marked depression; that there were no gross physical or

neurological organic lesions demonstrated, and that from the history of the case obtained through her relatives and attending physicians she had been in a highly emotional and agitated state since having been exposed to carbon monoxide fumes several weeks prior to the examination, that is to say, on or about March 1st and 2nd, 1936, and if Dr. Agos had diagnosed her condition as a psychosis resultant of carbon monoxide poisoning, would you be prepared to disagree with Dr. Agos?

Mr. Parmer:

I object to that. There is no evidence here that Dr. Agos ever made any such diagnosis; he has not been called.

Mr. Mershon:

He has not had an opportunity yet. This is cross examination, if your Honor please, and we do not want to keep shifting these doctors back and forth.

The Court:

We will go far astray if we assume facts either on the direct examination or cross examination not in evidence.

Mr. Mershon:

I adhere to Your Honor's ruling. That is all.

The Court:

Any re-direct examination?

Mr. Parmer:

That is all, doctor, thank you.

The Court:

All right. With the exception of the deposition that concludes the testimony?

911 Mr. Mershon:

If Your Honor please, we made a motion to strike the percentages shown by the chemist's testimony of carbon monoxide gas found in the stateroom on the grounds set forth in our motion, which motion, if sustained, would render the testimony of Dr. Henderson incompetent. We will leave the procedure entirely to Your Honor.

The Court:

I have thought over that. I think there is sufficient similarity to justify the introduction of that evidence, so I will overrule the objection and allow the testimony of Mr. Walker, the chemist, to stand.

Mr. Mershon:

We understand that Your Honor is reserving the right to pass upon the whole evidence which is offered in the record?

The Court:

Yes.

Mr. Mershon:

Before we start reading the depositions, the claimants severally wish to object to each and every of the hypothetical questions interposed to Dr. Henderson upon the same grounds that have heretofore been interposed in the motion to strike the percentages found by the witness, Mr. Walker, the chemist, and upon the further grounds that the hypothetical questions assumed facts that are contradicted here before the Court, and upon the further ground that the hypothetical questions are based upon evidence which has been contradicted by the witnesses of the petitioner. And we will add the ground, if Your Honor please, that the proper predicate has not been

laid for the introduction of expert testimony by Dr. Henderson.

912 The Court:

I will recognize the fact that your objections have been made, and that will save you interposing those several objections as each question is asked, and of course I prefer not to rule on them until I hear the depositions read. I shall not rule on the objections at this time.

(Thereupon the deposition of Dr. Yewdell Henderson was read in open Court by Mr. Parmer.)

Mr. Mershon:

The claimants severally move to strike each of the hypothetical questions and the answers thereto upon the following grounds:

It affirmatively appears that the questions are based upon a test shown not to be similar to the actual conditions existing at the time the claimants herein were exposed to the carbon monoxide gas.

The questions admit a complete absence from the air of carbon monoxide up to the period of ten minutes to seven, while the undisputed evidence shows that on the night the claimants were exposed to the carbon monoxide gas the engines or motors of the yacht had been operated for approximately two hours and twenty minutes prior to the claimants entering the stateroom.

913 The questions are vague and indefinite, in that they assume that the air in the room was normal and no facts are shown or included therein to show that the two women had been asleep in the small enclosed room for several hours, and by breathing the air had decreased the amount of oxygen therein and thereby increased the amount of carbon monoxide gas.

The questions omit all treatments given to the claimants, and especially omit the treatment of oxygen mixed with carbon dioxide.

The questions assume that the claimants were exposed to identical conditions because the claimants were in the same stateroom, and omits therefrom any possibility of one being subjected to a greater degree of monoxide, due to the fact that she slept directly over the pipe exhaust pipe which had holes therein.

The claimants move to strike from the deposition that part wherein Dr. Henderson reads from a book, upon the ground that the matters are mere hearsay, and it is an attempt to introduce in evidence the statement of some author who was not under oath at the time.

Mr. Parmer:

I will reply at this time or—

The Court:

You can cover that in your memorandum.

(Hearing concluded.)

914 In the United States District Court for the
Southern District of Florida, Miami Division.

In Admiralty, No. 147-M-Ad.

In the Matter of The American Yacht "Friendship II".

Deposition of Yandell Henderson, Ph. D., a Witness on
Behalf of the Libelant and Petitioner, Taken De
Bene Esse Pursuant to Sections 639, 640 and 641, of
Title 28 of the United States Code Annotated, Pur
suant to Notices Annexed Hereto, at 4 Hillhouse
Avenue, New Haven, State of Connecticut, on the
30th Day of September, 1937, at 11:15 O'clock A. M.,
Taken Before John H. Weir, Esq., a Notary Public
in and for the County of New Haven in and for the
State of Connecticut.

Appearances:

Kirlin, Campbell, Hickox, Keating and McGrann,
Esqrs., by Vernon S. Jones, Esq., 125 Broadway,
New York, N. Y.,
For the Libelant and Petitioner.

There was no appearance for the claimants.

F. H. Cogswell, Reporter, 504 Orange St., New Haven,
Conn.

Mr. Jones:

I offer in evidence a notice of the taking of the deposi
tion of Dr. Yandell Henderson with proof that it was
served on the proctors for the claimants on September
24, 1937, at 3:13 p. m., and ask to have that marked
Exhibit I.

(The notice referred to dated September 24, 1937, was
then marked "Libelant and Petitioner's Exhibit I.")

Mr. Jones:

I offer in evidence a second paper and ask to have it marked Exhibit 2, which is a notice of the adjournment of the deposition of Dr. Henderson from September 28 to September 30, which notice contains proof of service on the proctors for the claimants on September 25, 1937.

915 (The notice referred to dated September 25, 1937, was then marked "Libelant and Petitioner's Exhibit 2.")

DR. YANDELL HENDERSON, 440 Prospect Street, New Haven, Connecticut, a witness on behalf of the libelant and petitioner, being first duly sworn by John H. Weir, a notary public, testified as follows:

Direct Examination.

By Mr. Jones:

Q. Dr. Henderson, will you please state your age, your education, your training and your experience with carbon monoxide gas in its effects on human beings?

A. I was born in Louisville, Kentucky, April 23, 1873, and I am, therefore, now sixty-four years old.

My early training was at Yale University in physiological chemistry, and then at the Universities of Marburg and Munich in Germany.

In 1912 the United States Bureau of Mines requested the American Medical Association to nominate a commission of experts to investigate the subject of poisoning of mine gases and methods of resuscitation. I was appointed on that commission. After it had rendered its report, the director of the Bureau of Mines requested me to continue as a consulting physiologist of the United States Bureau of Mines in regard to mine gases and methods of protection.

My report on this subject after four years of work was published by the Bureau of Mines, and was made the basis of the offer by the Bureau of Mines to take charge of the scientific work in regard to war gases for the United States Army; and I was throughout the war the head of the Medical Section of the war gas investigations for the United States Army. I have continued in an advisory relation to the Chemical Warfare Service until now.

With Dr. A. W. Haggard of Yale University and Mr. A. H. Fieldner of the Bureau of Mines and others I carried out the investigations for the Tunnel Commissions of the States of New York and New Jersey, which were made the basis of the ventilation of the Holland Vehicular Tunnels under the Hudson River at New York. The

916 principles that we established and the standards that we set up have been adopted for all tunnels and other places where carbon monoxide occurs, since that time.

With Dr. Haggard I developed the treatment for carbon monoxide asphyxia by inhalation of oxygen and carbon dioxide, which is now used by the rescue crews of the police and fire departments of all American cities, and has been generally adopted all over the world.

The book, "Noxious Gases", by Dr. Haggard and myself is the standard on that subject in that field, and was published in New York in 1927. It was translated into German, and is the standard work on that subject in industrial medicine in Europe.

Q. Does your work for the Bureau of Mines and your work for the Chemical Warfare Service include experiments and studies in carbon monoxide gas?

A. Yes. That was one of the principal fields that we worked on.

Q. Are you now a resident of New Haven, Connecticut?

A. Yes. . . .

Q. Are you connected now with Yale University?

A. Yes, I am professor of Applied Physiology.

Q. Tell us what degrees you have.

A. B. A. from Yale in 1895 and Ph. D. in 1898.

The work particularly for the vehicular tunnels involved large numbers of experiments on men, in which they were given graded amounts of carbon monoxide, and were made to breathe it for definite times, in order to show what concentration of gas for what times would induce what effects.

Q. That is an elaboration of your answer to the previous question?

A. Yes.

Q. Will you state, Dr. Henderson, what the physiological effect of carbon monoxide is upon a human being who breathes it?

A. Well, the effects vary with the concentration of the gas breathed and the length of time of exposure. With quite low concentrations, that is, one or two parts in 10,000 there are no marked effects even after four or five hours—there are no effects other than slight lassitude.

Q. Have you taken into consideration in that
917 answer the volume of breathing?

A. If the individual is exercising vigorously, the effect would be slightly greater. But men working in garages, even people on the street, breathe small amounts, that is, one or two parts in 10,000 for some hours at a time without more than possibly a slight headache. When the amount is about four or five parts and is breathed for an hour without vigorous exercise, the individual may have in that case a somewhat distinct headache. But definite discomfort does not occur or is induced until seven or eight parts in 10,000 are breathed for at least an hour. By that I mean that in

tests on myself and my associates and on students who volunteered for this work we could subject ourselves to that test and still go on with our work in the laboratory through the rest of the day. The important feature is that as soon as the individual comes into fresh air, these low concentrations of gas are rapidly eliminated. By rapidly I mean a couple of hours.

Q. Now, will you explain, Doctor, how the carbon monoxide produces these symptoms? The physiological explanation for the manner in which carbon monoxide causes the symptoms you have described under the circumstances as you have described them.

A. The body lives on oxygen, and while the vital combustion is in many respects different from the combustion is a flame, yet there are also points of similarity. Carbon monoxide produces its effect by combining with hemoglobin of the blood. The hemoglobin of the blood is the substance that carries oxygen from the lungs to the tissues. Accordingly when a part of the hemoglobin is combined with carbon monoxide, it is temporarily rendered incapable of carrying oxygen; and the effects of the diminished supply of oxygen are somewhat like those seen in a lamp or a fire when the supply of air is diminished. The effects I have discussed up to this point fall far short of any condition approaching asphyxiation.

Q. Dr. Henderson, will you assume the following state of facts, first, that two young women in their twenties are asleep in a room on a yacht with no carbon monoxide in the air until a time about ten minutes of seven in the morning, when the engines of the yacht are started, and assume from then on that carbon monoxide begins to escape into the room at a rate so that at the end of two hours there are eight parts in ten thousand of carbon monoxide—eight parts of carbon monoxide to ten thousand parts of air; assume that at the end of two hours the two young ladies are

taken out of that room and taken into the fresh air, can you or can you not state with reasonable certainty from those facts whether either of the young ladies would suffer permanent physical harm from their experience?

A. I can state absolutely that they would not, for this reason.

Q. Will you give your reasons for your answer?

A. Yes, for this reason, that eight parts of carbon monoxide in the air for one hour would not be more than these women would have been exposed to, as the gas gradually accumulated in the room. That is, during the first hour there would not have been more than four parts, which is too little to do more than induce a slight headache; and the fact that eight parts was the amount reached at the end of two hours indicates that they were exposed to the equivalent of not more than eight parts for one hour. That is, the effects would not be greater than those produced by eight parts in one hour.

I have carried out many experiments on myself and my associates in setting the standards for garages and for tunnels and so on, and we have published the results, which show that the maximum amount of carbon monoxide reached in the blood under such conditions does not exceed thirty per cent.

Q. Is that thirty per cent of saturation?

A. Thirty per cent of saturation. During rest the factor of safety in the blood is sixty per cent. That is, only about thirty per cent of the oxygen is taken up by the tissues, and sixty per cent of the oxygen goes on into the venous blood. In a person with a thirty per cent saturation with carbon monoxide there would still be a factor of safety of something like thirty per cent—thirty per cent combined with carbon monoxide, the remaining sixty to seventy per cent combined with oxygen, of which the tissues would take up only about thirty per cent, so that there would still be an ample excess supply of oxygen.

This degree of saturation will induce ill temper, and will cause a headache, but is not enough to cause unconsciousness, although on severe exertion it might induce fainting. All of the carbon monoxide would to be eliminated from the body, as numerous experiments in my laboratory have shown, in two or three hours; and no subsequent effects are induced. In actual practice there are thousands of garage workers who in the course of a day's work are exposed to as severe conditions as these, and suffer nothing more than a headache which passes off in a few hours without subsequent ill effects.

Q. Have you ever heard of a case under the circumstances I gave you in the hypothetical question where there were any permanent effects?

A. Never where the breathing of carbon monoxide was the sole condition. Where the individual is intoxicated with alcohol, the effects of alcohol may also have to be taken into account.

Q. Of course, in the hypothetical question I gave you, Doctor, I was not assuming anything about alcohol, do you understand that?

A. Yes. I was discussing purely carbon monoxide, but I had understood that these women were in some state of depression or unconsciousness at the end of the two hour period.

Q. Is your answer to the question the same? You know you eliminate all conditions of alcohol. On the bare facts that I gave you?

A. Yes, yes.

Q. Now, Doctor, I want you to assume the
920 following facts. Assume two ladies in the twenties go to sleep in a room on a yacht where the air is not contaminated—where it is normal, and at ten minutes of seven in the morning the engines are started while the ladies are still in the room asleep; and at approximately nine o'clock in the morning the young ladies are removed from the room, and both are found to be

unconscious. They are carried up to the deck and the fresh air, and one of them revives within a few minutes and talks, and the other one revives in response to physical stimuli like slapping and shaking and speaks to a doctor. Also assume that the cause of their unconsciousness was carbon monoxide gas. Can you state with reasonable certainty whether or not there would be any permanent physiological after effects from such an experience?

A. There most certainly would not. The fact that they became conscious sufficiently to answer a question within a few minutes after being removed from where the gas was would be absolute, certain evidence that they had not absorbed enough carbon monoxide to produce a forty per cent saturation in the blood; and no after effects ever follow from a brief exposure to carbon monoxide, in which the amount of carbon monoxide absorbed does not rise above forty per cent saturation.

Q. Now, in the various questions I have addressed to you I have asked you to state your opinion on the physiological effects. Tell me whether in your answer to that question you were taking into consideration neurological and psychiatric effects?

A. Yes, I was.

Q. And your answer is the same?

A. My answer is the same. Neurological effects occur only in cases in which the saturation of the blood has risen well above fifty per cent of saturation, and the exposure has lasted for several hours, and the patient has remained unconscious for many hours thereafter—as a figure I would say at least twelve hours. In those cases there are neurological effects, that is, upon the eyes and upon the equilibrium and so on. Psychic effects are not consequences. I mean by that the sort of conditions for which people are sent to insane asylums. There is, after a severe asphyxiation such as I have described, a loss of memory, but in con-

tradistinction to neurological effects psychic effects are absent even after severe asphyxiation.

Q. You spoke of cases of severe asphyxiation such as you have described. Will you tell us exactly what they are, so that we may have it clearly in mind in what cases there might be a loss of memory?

A. Well, a severe asphyxiation occurs with illuminating gas, when a man hangs his trousers on the gas burner in a room lighted by illuminating gas, and lies in that room for twelve, fourteen, eighteen hours, so that his blood becomes at least fifty—generally sixty—per cent saturated, and he continues in this condition for many hours. In those cases unconsciousness lasts sometimes anywhere from a day to two or three days, or even a week. That is the type of severe asphyxiation that produces serious subsequent neurological effects, but not psychic effects. These cases, for instance, do not suffer from hallucination.

Q. Or psychosis?

922

A. Or psychosis, or at least I have never in a very wide experience known of a case which did. But many cases of these severe conditions suffer from neurological effects. The essential point is that the saturation of the blood must exceed fifty per cent—generally even sixty per cent—of saturation, and the exposure must last for many hours, and must be followed by a prolonged period, lasting sometimes for days, of coma, that is, unconsciousness.

Q. When you speak of coma and unconsciousness, are you taking into consideration the type where there is uninterrupted unconsciousness?

A. Yes, it is unconsciousness; they cannot be roused. If they are roused by any sensory of stimulation or by the injection of any drug or by ammonia held under the nose or anything of that sort, the unconsciousness is not deep, and there is not much carbon monoxide in the blood. In cases of severe asphyxiation conditions of coma are found as in surgical anesthesia.

Q. I want you to assume, Doctor, that two young ladies in the twenties are carried into the fresh air after exposure to carbon monoxide gas, and that they are unconscious, and that each of them is within two hours given an injection of caffein sodium benzoate of seven and a half grains, and that immediately both of them spoke to the doctor, can you state with reasonable certainty whether or not the carbon monoxide, if you assume it produced the unconsciousness, in that case would have any permanent after effects on either of the young ladies?

A. It certainly would not, because the fact of their responding to that rather mild stimulation would show that the unconsciousness was not deep, and would indicate that the greater part of the carbon monoxide has already been eliminated.

Q. Can you state with reasonable certainty,
923 Doctor, whether the inhalation of carbon monoxide gas, no matter in what quantities, ever produced a psychosis of fear in persons subjected to it?

A. I have never known of a case out of many hundreds—perhaps thousands—that have come to my attention. That is not the type of effect that follows.

Q. Will you describe again the type of effect which carbon monoxide produces upon the body?

A. Well, in these severe prolonged asphyxiations, which are quite rare as a matter of fact, the after effects may be loss of sight or partial loss of sight. It may be inability to walk without staggering or inability to carry out precise movements with the hands. The effect on the mind is mainly in loss of memory and a tendency not toward insanity but toward idiocy, stupidity. That is, these cases are extremely stupid.

Q. Assuming that a person who is subjected to any degree of carbon monoxide poisoning, afterward recovers consciousness, and thereafter develops a psychosis, but at various times she exhibits an active and alert mind,

can you state with reasonable certainty whether or not carbon monoxide poisoning was a competent cause of that psychosis?

A. Carbon monoxide would not even be a contributing cause.

Q. What is the reason for your conclusion, Doctor?

A. Well, mainly that it just never does. It never has that type of effect.

Q. Is the fact that the mind is at any time alert after the incidence of carbon monoxide exposure conclusive evidence or not that carbon monoxide has not damaged any of the brain or nerve cells?

A. It is perfectly clear evidence that the type of effect that carbon monoxide produces has not occurred.

Q. Now, you spoke a minute ago, Doctor, of the impaired vision of certain persons exposed to an unusually large amount of carbon monoxide poisoning. Can you describe the physiological basis of that lack of diminished vision?

A. The basis is really anatomical. That is, 924 when the person later dies and is autopsied and the brain is examined, spots of softening can be found in certain areas. These areas correspond fairly well with the parts of the body that have not been functioning properly.

Q. Has the carbon monoxide any physiological or anatomical effect upon the optic nerve itself?

A. No. The effect is not upon the optic nerve; it is upon the centers in the brain. But it should be understood that those cases are extremely rare, and that a severe asphyxiation generally either dies or recovers completely. Only a very small percentage of severe asphyxiations which did not die at the time suffer any permanent after effects.

Q. My inquiry now, Doctor, is directed toward the character of the effects suffered by persons who are exposed to these extreme degrees of carbon monoxide pois-

oning. Have you told us now all of the physiological and anatomical effects upon the structures of the body, which are produced by carbon monoxide gas poisoning?

A. Well, in order to induce any subsequent effects, the asphyxiation must not only be severe but it must be prolonged.

Q. Yes. Well, with that modification will you listen to the question as it is read again and attempt to answer it?

(The last question was read by the Reporter.)

A. The optic nerves pass back through the skull to what are called the basal ganglia, and there they have relays by other nerve fibers to parts of the cerebrum, which are the seat as far as we know of the intelligence. The injury that prolonged asphyxiation occasionally induces may be either in the basal ganglia, with which the optic nerves first connect, or in the cerebral hemispheres. More commonly the basal ganglia are effected, and that is the reason why neurological effects are more common than psychic effects.

Occasionally in the eye a condition of so-called
925 opera glass vision develops, in which the periphery of the retina is damaged or practically destroyed so far as seeing goes, and only the central part of the retina remains, so that the individual sees only a very small area of what is directly in front of his eyes.

Q. Doctor, have you ever heard of papilla edema?

A. Yes, but I don't know much about it in relation to carbon monoxide asphyxiation.

Q. Isn't papilla combined with an edema?

A. I thought you referred to something else. Edema is commonly a result of a disease of the kidneys in which the kidneys fail to eliminate salt in the amounts in which it is eaten, and the salt remains in the body. It holds

back water also, but that is not at all a common occurrence after carbon monoxide asphyxia, if ever.

Q. Have you ever heard of a papilla edema of the optic disc as a result of carbon monoxide poisoning?

A. I don't think that I have ever heard of that particular occurrence as a result of carbon monoxide poisoning.

Q. Can you state your opinion with reasonable certainty whether that could be the result of carbon monoxide poisoning?

A. I should think that after a prolonged asphyxiation it might, but a very prolonged asphyxiation would be required.

Q. Will you tell us in detail what you mean by that prolonged asphyxiation which you say would be necessary to possibly produce that condition of the optic nerve?

A. It would be such an amount of carbon monoxide in the air as would induce a fifty or sixty per cent saturation of the blood, and would be continued for many hours, perhaps all night, and would be followed by a prolonged period of deep unconsciousness. By prolonged I mean all day or several days. Experimentally it is really rather difficult to induce such a condition for the reason that the animal—and the same is true clinically—the animal or patient either dies or recovers completely thereafter.

I might add that in a book which I have been writing about this general subject, I have made the positive statement, which I believe is in accord with the opinion of competent authorities, that there is no such thing as chronic carbon monoxide poisoning.

Q. Doctor, I want you to assume the facts I gave you in the first hypothetical question. Do you recall those or would you like to have that question again?

A. I think I remember.

Q. I want you to assume the additional fact that one of the girls was found some time later—by that I mean months—to have an edema of the optic disc. Can you state with reasonable certainty whether or not that condition of the optic disc was or was not due to carbon monoxide inhalation?

A. It most certainly was not, because the conditions as described in the questions would be wholly insufficient to have any severe subsequent effect.

Q. Now, I want you to assume again, Doctor, that these girls were exposed to carbon monoxide while they were at rest for a maximum period of two hours, and that the quantity of carbon monoxide to which they were exposed started at the beginning of the two hour period at zero, and at the end of the two hour period was not more than eight parts in ten thousand, and that they then were removed. Can you tell me during the two hours they were there what the probable percentage of saturation of their blood was at the end of the two hours of carbon monoxide inhalation?

A. It is quite certain that it would not exceed thirty per cent saturation.

Q. Now, assuming, Doctor, the other facts I have given you in the hypothetical question, and assuming further that at the end of the two hours the girls were brought out into the open air, and that one of them recovered completely within an hour—and by recovery I mean she was thoroughly conscious and talking, but that the other girl, after being brought to consciousness by injections of caffein sodium benzoate, lapsed off again into unconsciousness, can you state with reasonable certainty whether carbon monoxide would account for the difference in the respective symptoms of the girls that I have just recited?

A. No. If the two girls were exposed to the same conditions, the degree of saturation of their blood would necessarily be very nearly the same, and would not ex-

ceed thirty per cent saturation, and this would correspond with a very early awakening on the part of one or both; and if one of them did not awaken, I should expect to find some other reason for her not awakening.

Q. Assuming the same facts which I have just given you, Doctor, and that one girl responded and came to consciousness almost immediately after being brought into the fresh air, can you state with reasonable certainty whether the longer unconsciousness of the other girl was the result of carbon monoxide poisoning?

A. It certainly was due to some other accessory cause.

Q. Will you tell us what the accepted relationship is between the time of exposures, the concentration of carbon monoxide gas breathed and the corresponding symptoms for various concentrations, or for modifications of those three factors?

Q. For that purpose I can't do better than quote a statement which was published in a government report and in scientific journals, and has been very widely adopted.

It is to this effect: (Reading from a volume.)

"The whole matter may be more simply summed up in an expression involving the time measured in hours, the concentration of carbon monoxide in the air in parts in ten thousand, and a constant for each degree of physiological effect.

928 "The physiological effects of all concentrations and times (within reasonable limits, that is, a few hours) may be defined as follows:

"(1) Time X concentration = 3, no perceptible effect.

"(2) Time X concentration = 6, a just perceptible effect.

"(3) Time X concentration = 9, headache and nausea.

"(4) Time X concentration = 15, dangerous.

"Physical exertion and increased breathing would reduce the constant in the first equation from three to two or one, or even less, and would affect the other equations correspondingly."

(The witness continued his testimony as follows:)

This is the most general statement that has yet been drawn up, and it is now universally accepted by experts.

The conditions described in the hypothetical question fall short of the severity indicated under (3).

As regards the conditions defined by line (4), by "dangerous" is meant that if the time or the concentration is exceeded, death may occur; but even under those conditions if recovery occurs at all it is complete in ninety-nine cases out of a hundred.

Q. Does the table that you have just given us assume that during the time of exposure the patient was at rest, and, of course, if the patient were not at rest, the table would be varied accordingly, would it not?

A. Yes, during exercise the absorption of gas is more rapid.

Q. Now, Doctor, assuming that the two girls in their twenties were subjected for two hours to a concentration of carbon monoxide gas, which commenced at the beginning of the two hours at zero, and ended at the end of the two hours with eight parts in ten thousand, and that they were at rest all this period, and were then brought out to the fresh air, will you state at what part of the table that you have just announced for us the physiological effects would be identified?

A. They would fall somewhere between lines
929 (2) and (3).

Q. Can you state with reasonable certainty whether under such circumstances there would ever be any after effects in either of the girls?

A. Never from carbon monoxide.

Q. Doctor, assuming that after the exposure to carbon monoxide, which I just asked you to assume in the last question, thereafter one of these girls developed a psychosis, which was largely expressed sometimes in a recurring fear of having her child taken away from her; at times she was pathetic and at other times excitable and restless; at times taciturn and at other times garrulous; and that at other times her mind was active, so that she could play a game of bridge, and could sit down and bid a game and be able to make the bid and make rubber; and assuming that at times she complained of and actually had a loss of memory, but that at other times her memory and mind were normal the same as before this carbon monoxide incident, can you state with reasonable certainty whether any of those symptoms given you in combination with the others could have been due to carbon monoxide poisoning on the boat?

A. They certainly were not. The apathy following prolonged asphyxiation is continuous. The description does not apply to the after effect of carbon monoxide asphyxiation, even when it is prolonged.

Q. Doctor, assuming that these two girls were subjected in March of 1936 to carbon monoxide poisoning, and that thereafter their blood was found to show some degree of anemia, can you state with reasonable certainty whether the carbon monoxide inhalation was the competent, producing cause of that anemia?

A. The degree of exposure was certainly entirely insufficient to have any such effect. In order to induce anemia there has to be repeated exposures, such as men have who work around blast furnaces.

Q. Will you explain your answer with particular attention to the way in which carbon monoxide is taken into the blood, and to the way, if any, that it is ejected from the blood?

A. Carbon monoxide forms exactly the same kind of a combination with the hemoglobin of the blood as does oxygen, but the attraction is about three hundred times as great. That is, if there is one part of carbon monoxide in the air and three hundred parts of oxygen, and this mixture is breathed for twenty-four or thirty-six hours, the hemoglobin of the blood would be distributed about one-half to oxygen and one-half to carbon monoxide. But to reach this condition requires very prolonged exposure. After the ordinary exposure to carbon monoxide the equilibrium is not reached, because the time is too short; and as soon as the individual breathes pure air, the oxygen of the air begins to displace the carbon monoxide from the blood, so that even when a high degree of saturation has been reached, say, fifty or sixty per cent, all of the carbon monoxide is displaced from the blood in the course of five or six hours. When saturation is thirty per cent or less, even a couple of hours breathing fresh air is sufficient to remove practically all of the carbon monoxide from the blood.

Q. Doctor, assuming that the carbon monoxide poisoning was sufficient to produce prolonged unconsciousness, and by that I mean for days—

A. Yes.

931 Q. But with subsequent recovery from unconsciousness by the subject human being, can you state with reasonable certainty whether or not carbon monoxide would be completely out of the blood at the end of, say, three or four days?

A. Absolutely; completely out of the blood in one day or less.

Q. Assuming thereafter that the same person was anemic, can you state with reasonable certainty whether

the carbon monoxide was a competent, producing cause of the anemia after a mild degree of absorption of the carbon monoxide?

A. There is no anemia induced.

Q. Anemia?

A. Yes, no anemia induced.

Q. In those cases, Doctor, where anemia does result from carbon monoxide poisoning—those cases of prolonged exposure with high saturation, is it due to that part of the anatomy of the body which manufactures the red corpuscles?

A. It is by no means certain that anemia is primarily induced by carbon monoxide.

Q. Can you state with reasonable certainty whether carbon monoxide ever produces anemia in a human being?

A. It is very improbable that it ever does. It generally has exactly the opposite effect.

Q. Now, Doctor, can you state with reasonable certainty whether or not cyanosis of a human being is produced by carbon monoxide poisoning?

A. It is not; for this reason.

Q. Will you explain your answer, please?

A. For this reason, that blood which is combined with oxygen is bright red. Blood which has lost its oxygen and is in the veins takes a bluish tint, but in blood which is combined with carbon monoxide the hemoglobin has a bright cherry red color, and
932 is very much brighter even than arterial blood.

So that the occurrence of cyanosis would be direct evidence of a lack of any serious amount of carbon monoxide in the blood. One of the standard methods of determining how much carbon monoxide there may be in a sample of blood is to take a quantity of normal blood and add carmin, which is a bright red dye, to it, until it takes on the color of the carbon monoxide blood.

Q. What is that test called?

A. That is a method devised by Haldane.

Q. Assuming that those girls were in a room where they were exposed to some degree of carbon monoxide poisoning for a period of two hours, and were afterward removed, and that within the next ten or twelve hours after they were removed one of the ladies was found to have cyanosis, can you state with reasonable certainty whether or not the carbon monoxide was the cause of that cyanosis?

A. It certainly was not. The cyanosis would prove that there was no considerable amount of carbon monoxide in her blood. If the cyanosis occurred soon after she was removed from the chamber, it would prove that she had less than thirty per cent saturation.

Q. By "soon after" what do you mean, Doctor?

A. Oh, within a half hour; a half or three-quarters of an hour.

Q. Assuming, Doctor, that those two young ladies had been using alcoholic beverages the night before they retired, and that they retired late in the evening and had been indulging in alcoholic beverages, and that they went to sleep in that room, and that they were exposed to carbon monoxide from ten minutes of seven to around
933 ten minutes to nine in the morning; that they were brought out unconscious; that one of them

was quickly revived and spoke, and after two hours the other was given an injection of caffein sodium benzoate—seven and a half grains—and she immediately responded to that and spoke to the doctor, can you state with reasonable certainty whether or not alcohol was a factor in the unconsciousness of either girl or both girls?

A. I would say that alcohol was a factor, and was the principal factor.

Q. Will you give the reasons for your answer?

A. Carbon monoxide acts somewhat like alcohol both when it is in the body and in its after effects. That is, after an alcoholic intoxication there is a headache, and

after carbon monoxide asphyxiation, or even an exposure to thirty per cent saturation, there is a headache.

The description of these cases fits a condition of alcoholic intoxication distinctly more closely than it does a condition of carbon monoxide asphyxiation, for anyone, after such a moderate degree of asphyxiation that consciousness returns at all within a half hour, generally remains conscious; whereas anyone who is intoxicated with alcohol may be awakened, but the alcohol still remaining in the body tends to again induce unconsciousness. The after effects of carbon monoxide to such a degree as has been described are very much briefer than those of alcohol.

Q. Is the regaining of consciousness and then the lapsing off into unconsciousness a characteristic symptom of carbon monoxide after effects?

A. It is not.

Q. When there is unconsciousness as a result of carbon monoxide poisoning, can you state with reasonable certainty what the course and characteristics of that unconsciousness are?

A. Well, after the patient once again becomes conscious he remains conscious. It is a distinction from alcoholic intoxication.

Mr. Jones:

That is all. Thank you very much, Dr. Henderson.

(Signed) YANDELL HENDERSON.

Read and subscribed and sworn to before me this 2nd day of October, 1937.

(Signed) JOHN H. WEIR,

(Notarial Seal) Notary Public.

935 On April 30, 1938, the Court filed its PRE-
LIMINARY MEMORANDUM, in words and fig-
ures following, to-wit:

936 In re: Yacht "Friendship II".

Memorandum:

I shall first discuss the question of the cause of the damage to the two claimants. Several reasons lead me to the conclusion that such damage as was suffered by them was caused by monoxide poisoning, and not by alcoholism. I think the burden of proof is on the claimants to establish this fact. This, I think, they have done.

The manner of attention given to the claimants on the yacht after the condition of claimants was discovered indicates that it was monoxide poisoning. Mr. Yeiser so treated it, and the members of his crew so treated it. Mrs. Just was taken to the hospital and her condition was indicated on the hospital records as gas poisoning rather than alcoholism, and she was so treated in the hospital. Another important fact leading to this conclusion is that the demonstration that was conducted experimentally shows it to be a fact that monoxide gas could, and, I find, did penetrate into the cabin in which the two claimants slept. The theory of alcoholism is not established by the evidence in the record. The amount of drinking that was done was not sufficient to cause unconsciousness of the claimants. Mr. McKay, together with Mr. Yeiser and members of the crew, treated the case as one of gas poisoning, and Mr. McKay's testimony is also strong on the point that sufficient alcohol was not consumed by the claimants to produce unconsciousness. The chief reliance of the petitioner is the testimony of Dr. Henderson. Dr. Henderson is a specialist of high renown, has had extensive experience in experiments and study of monoxide poisoning. His testimony is that of

an expert. A large part of his testimony is, I think, subject to the criticism that the hypothetical questions propounded to him did not incorporate the running of the yacht the Sunday evening before the Monday morning when the yacht returned to Miami. Certain other parts of his testimony are weighty. For instance, his testimony as to a cyanosis being inconsistent with gas poisoning. I do not think it sufficiently appears from his testimony, however, that a blue condition of the skin would not be consistent with the bright color of the blood in the subject at the time. However, as intelligent as the testimony of Dr. Henderson is, I believe the burden of proof was met by claimants in regard to the cause of damage:

I shall next discuss the extent of the measure of care due and owing by Mr. Yeiser to his invited guests. Mr. Yeiser as the owner of the yacht knew of the imperfect condition at one time of the exhaust pipes, and that they were repaired. He should have been on the lookout especially in view of the fact that his two sons felt the effect of monoxide gas in September of 1935. The petitioner's explanation in regard to the September, 1935, occasion is that the boys' damage resulted from monoxide gas being blow back after it was exhausted from the pipes, and that it did not come through the bilge into the cabin. One of the boys was in the after-cabin, and one was in the state room on the upper deck. However, my opinion is that Mr. Yeiser, through his captain or engineer, was held to a higher degree of inspection to determine just what was the cause of the damage to his sons on the occasion of September, 1935. The character of the examination which was made at that time, I think, was more or less superficial. At least it was not careful and sufficient enough to relieve Mr. Yeiser of the possibility that damage was caused by leaky pipes emitting gas into the bilge, rather than coming from the discharge outside of the boat being blown back onto the

yacht by the wind. I think that proper inspection would have disclosed the real condition of the pipes at that time and had their condition been definitely ascertained in September, 1935, it is reasonable to suppose that the condition in which they were in February, 1936, might have been anticipated. Granting that Mr. Yeiser

933 was of the opinion that the fumes from the exhaust blew back on the boat, I do not think he was warranted in having come to that conclusion without having made a more thorough inspection before he arrived at the conclusion that it was the gas wafted back by the breeze instead of gas being emitted from the exhaust pipes into the patch itself. Another matter is that if he was aware, or should have been aware, of the dangerous condition, it was his duty to have warned his guests of the dangerous condition, and I hold that there was sufficient appearing to have charged him with the knowledge of the condition that did exist with reference to the condition of the exhaust pipes. I think there was a duty on Mr. Yeiser's part to exercise ordinary care. *The City of Seattle*, 150 Fed. 537. The claimants were not licensees, nor trespassers, but were guests invited by the owner. *The Silverado*, 14 F. (2) 243. There was some measure of duty due and owing to the invited guests, and it is my opinion that this duty was violated. Mr. Yeiser was charged with knowledge of the condition that existed, and this he should have corrected, or at least he should have warned his guests of the condition existing.

In this finding I regard the burden of proof as being on the claimants, not only as to the cause of the injury, but as to what duty was owing to the claimants, and whether that duty was violated.

We next come to the question of limitation of liability. Whether there is limitation by reason of the lack of knowledge on the part of Mr. Yeiser, can be disposed of in a few sentences. The reasons that have already

been referred to as creating a duty on the part of Mr. Yeiser to his invited guests established this knowledge on his part sufficiently to deny the prayer of the petitioner for limitation of liability. Mr. Yeiser was an engineer himself. The yacht was built in 1922, and he had been the owner for some several years. I think the evidence establishes the fact that the condition
939 which Captain Patton found, and which was repaired, was made known to Mr. Yeiser. He is charged with knowledge of this repaired condition and the possibility of a recurrence. When monoxide gas was found on the yacht thereafter, it emphasizes the importance of the duty of Mr. Yeiser to have ascertained what was the condition in February, 1936, of the exhaust pipes which had been theretofore repaired. The presence of monoxide gas on the yacht in 1935 brought home the existing facts to Mr. Yeiser sufficiently to create this knowledge on his part. A denial of limitation should be decreed.

In the next place, a very ingenious argument was advanced by the petitioner as to the abatement of the cause of action in personam because of the death of Mr. Yeiser. There is a line of cases applicable to maritime torts within the territorial limits of the States where departure from admiralty law is recognized, in that an action for death may be maintained. This line of cases is recognized by the petitioner. The petitioner also recognizes the point of law as to survivorship of personal injury actions, where the action is in rem. Petitioner's argument is that the Florida survivorship statute, applied to admiralty, is not supplementary legislation, while this line of cases sustaining a right to sue for an action for death is supplementary to the admiralty law; and, secondly, that there would be lack of uniformity in applying the Florida statute, while this line of cases does not conflict with the uniformity required by the United States Constitution in regard to admiralty

matters. I can well see the distinction contended for with regard to the creation of actions for death being supplementary, inasmuch as there existed no such action in admiralty. The admiralty law recognized no survivorship in actions for damages, but with reference to rem pleadings there was a departure from the rigid admiralty law. As to a conflict with the uniformity required by the United States Constitution in regard to admiralty matters, I do not think the point is well taken because such uniformity is no more stricken down by a survivorship statute in regard to personal injury damages than by recognition of the right of action for death. In other words, if there is a statute in Florida, which there is, giving rise to a new action for death, and should there be no such statute in another State, for instance, South Carolina, certainly there would be a

940 lack of uniformity there, yet that lack of uniformity is not held to be in conflict with the

Constitution. Likewise, the survivorship of a personal injury damage is recognized by a Florida statute, and suppose the same is not recognized by a South Carolina statute. The same lack of uniformity exists, but in my opinion this lack of uniformity is not in conflict with the constitutional provisions of uniformity required of admiralty.

Notwithstanding the force of the argument with reference to the State statute giving the death claim as being supplementary legislation, and the survivorship action not being supplementary, which distinction I think exists, I am of the opinion and find that in principle the survivorship of an action in personam, under the circumstances in this case, should be recognized. In the first place, the Fifth Circuit Court of Appeals has held that the Florida survivorship statute should be liberally construed. *Brill vs. Jewett*, 262 Fed. 935. In the next place, cases have upheld State statutes applicable to maritime torts within the territorial limits of the State which pro-

vide for the creation of a right of action for death, as well as for the survivorship of personal injury actions. *Quinette vs. Bisso*, 186 Fed. 825. Here the Fifth Circuit Court of Appeals has upheld a Louisiana statute of such a nature.

The authorities do not sustain petitioner's contention. *The Belfast*, 135 Fed. 208, was an action in rem. In *The Amoth*, 3 F. (2) 848, it was recognized that if there was an applicable State statute, it would control. In *The Statler*, 31 F. (2) 707, there was an announcement by the Court of the law dealing with death on the high seas, but such announcement was not in conflict with the enforcement in admiralty of liability for maritime torts within territorial waters of a State, both as to the creation of a right of action for death, and survivorship in an action for damages. *The LaFayette*, 269 Fed. 917, is not in point, in that the New York statutes and decisions did not provide for survivorship. While the argument is ingenious, and the distinction pointed out is recognized, I conclude that the cause of action does not abate by reason of the death of Mr. Yeiser.

The above conclusions cover the findings on the points argued before me.

JOHN W. HOLLAND,
United States District Judge.

941 On December 13, 1938, the Claimants, Just and Gruner, filed NOTICE OF APPLICATION FOR SETTLEMENT OF FINAL DECREE.

On April 25, 1939, Claimant, Anne Elise Gruner, filed her BILL OF COSTS and PRAECIPE FOR TAXING SAME.

On April 25, 1939, Claimant, Charlotte Cross Just, filed her BILL OF COSTS and PRAECIPE FOR TAXING SAME.

On April 25, 1939, FINAL DECREE was entered and filed in words and figures following, to-wit:

DECREE ADJUDGING LIABILITY AND DENYING
LIMITATION THEREOF WITH FINDINGS OF
FACT AND CONCLUSIONS OF LAW.

In the District Court of the United States for the Southern
District of Florida, Miami Division.

942 In Admiralty—No. 147-M.

In the Matter of the Petition of Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., 'as Owner of the American yacht "Friendship II," for Limitation of Liability.

This cause having come on for trial directly before the Court upon the pleadings, and the Court having heard the testimony and evidence adduced on behalf of the petitioner and the claimants, Charlotte Cross Just and Anne Elise Gruner, and having thereafter heard and considered the arguments of proctors for the respective parties, and the Court having filed its memorandum opinion herein on the 30th day of April, 1938, finding that liability upon the part of the petitioner existed and that a denial of limitation of that liability should be decreed, the Court now makes the following findings in addition to and supplementing and confirming the findings contained in said opinion.

Findings of Fact.

1. At the time the events herein set forth happened, the houseboat "Friendship II" was owned by Henry C. Yeiser, Jr. . It is a cruising houseboat yacht built in 1928, powered by twin gasoline motors and used solely for pleasure. Yeiser lived aboard, occupying a stateroom on the upper deck, and the boat and crew thereof were at all times under his immediate personal control and supervision when he was aboard the vessel.

2. The yacht was constructed with a double hull consisting of an inner and outer skin with a space between the outer and inner hulls opening directly into the bilge. The so-called master stateroom is located on the lower deck directly over the bilge and near the stern, and has a connecting private bath. There is a single bunk on each side of this stateroom. Each motor has its own separate exhaust pipe and the boat could operate under either or both of the motors. The exhaust pipes from the two motors pass through this bilge directly underneath these bunks and come out at the stern. The port and starboard walls of the master stateroom and of the bath formed a part of the inner hull. Each of these walls has a number of vents or openings in it so designed that air from the bilge could circulate through the space between the inner and outer hulls and into the stateroom. Through such direct communication from the bilge into the stateroom and bath any gases which might collect in the bilge could by their natural diffusion flow into the stateroom and bath through these vents. The only partition in the bilge is a bulkhead directly behind the engine room and forward of the cabins on the lower deck. This bulkhead was not watertight or airtight because of openings around the exhaust pipes and the propellor shafts. Water could

flow back and forth in the bilge under the engine room bulkhead.

3. In December, 1933, the boat, then named the "Amity," was surveyed for insurance purposes. As a result of this survey, two holes (one located in Cl.'s Ex. 5 and one in Cl.'s Ex. 6) were discovered in the port exhaust pipe and the surveyor recommended that the port exhaust pipe be renewed or repaired. The then owner desired to sell the boat and did not want to incur the expense of installing a new exhaust pipe so he instructed the Captain to repair the pipe if possible. The pipe was repaired to the satisfaction of the insurance surveyor on January 3, 1934, the holes being patched by means of a metal plug and a sleeve. In the first part of March, 1934, the Captain, then in command, discovered that still another hole had developed in the port exhaust pipe (about four feet from the rear end of Cl.'s Ex. 6) and his engineer put on a temporary patch by means of tape and copper wire. As a prospective purchaser, Yeiser, together with the Chief Engineer employed by him on the boat then owned by him, inspected 944 the "Friendship II." Yeiser asked the Captain about its condition and was told, among other things, that the port exhaust pipe should be renewed. The Captain left the vessel in May, 1934, and was not connected with it thereafter. About five weeks after his inspection, and some time in May, 1934, after the Captain had left the vessel, Yeiser bought it. After buying this vessel, Yeiser renamed it the "Friendship II." Yeiser owned another vessel named the "Friendship I." The man who owned the "Friendship I," and who sold it to Yeiser, was retained by him as Captain. This man also served as Captain aboard the "Friendship II" and the same Chief Engineer served on both vessels. The exhaust pipes on the "Friendship I" were located on the side of the vessel toward the aft and difficulty

was experienced because of exhaust gas blowing in over the after deck. In order to prevent the gas from coming in where passengers would be, Yeiser had the exhaust pipes on the side of the "Friendship I" changed so that they came up through the smoke stack. Yeiser was an engineer, a balloon pilot, a licensed airplane pilot, had made a study of boats, had owned several, had studied navigation, was studying to get a master's license, and had a knowledge of gasoline motors. After buying the "Friendship II," Yeiser experienced trouble because of exhaust gas on that vessel. Yeiser issued orders to his Captain to see that the after windows in the master stateroom of the "Friendship II" were always closed. While aware of the danger from the gas, Yeiser assumed that it was blowing in over the stern. On one occasion Yeiser's Chief Engineer and a fishing guide were both affected by carbon monoxide while they were cleaning fish over a latticed manhole in the after deck at the stern of the vessel. In September, 1935, Yeiser's two sons were overcome by carbon monoxide while they were in the master stateroom. Yeiser was aboard at the time and knew of that occurrence. As a result thereof, Yeiser repeated his orders to keep the rear windows closed and ordered his Engineer to inspect the exhaust pipes. The character of the examination which was made at that time was more or less superficial, at least it was not careful and sufficient enough to relieve Yeiser of the possibility

that damage was caused by leaking pipes emitting
 945 gas into the bilge rather than coming from the
 discharge outside of the boat being blown back
 onto the yacht by the wind. A proper inspection would have disclosed the real condition of the pipes at that time and had their condition been definitely ascertained in September, 1935, it is reasonable to suppose that the condition in which they were in February, 1936, might have been anticipated. The condition which the insurance surveyor found in 1933, and which was repaired,

was made known to Mr. Yeiser and, as the owner of the yacht, he knew of the imperfect condition at one time of the exhaust pipe and that it was repaired. After September, 1935, no attempt was ever made to thoroughly inspect the exhaust pipes until after the claimants herein were injured. Yeiser was fully aware of the danger from carbon monoxide gas and of the dangerous condition existing in the master stateroom due to the tendency of carbon monoxide gas to enter that stateroom. He also knew of the likelihood of such gas continuing to enter that stateroom and that a tendency of carbon monoxide gas to enter the master stateroom constituted a dangerous condition. On many occasions after September, 1935, he talked about removing the exhaust pipes then in the boat and replacing them with exhaust pipes coming out of the dummy smoke stack on the upper deck because of the presence of carbon monoxide gas in the master stateroom. He took no active steps, however, to have this done until after the claimants herein were injured.

4. On Friday, February 28, 1936, claimants, Charlotte Cross Just and Anne Elise Gruner, at the invitation of Yeiser, were guests aboard the houseboat for a fishing trip and cruise from Miami, Florida, and return. They had gone aboard at Miami in the afternoon, before sailing and Yeiser assigned the master stateroom to them for their use during this trip. There was one other stateroom which was unoccupied and unused during the trip. The boat left Miami at about 5:30 P. M. and proceeded to Featherbed Shoals, arriving there shortly after dark, about eight o'clock. Neither of the claimants was in the stateroom assigned to them for any considerable period

946 of time until several hours after the motors had been stopped. The boat remained anchored at this place until about 6:30 o'clock the next morning, when it proceeded to Card Sound Cut, where it re-

remained at anchor while the party fished in small boats during Saturday and Sunday. At about 7:10 P. M. on Sunday, March 1, the motors were started and the boat proceeded back to Featherbed Shoals, where it arrived at about 9:10, and anchored until early in the morning and then, at about 6:50 A. M., proceeded toward Miami, arriving at about 9:10 A. M. Shortly before the boat reached Miami the claimants were discovered in an unconscious condition. The door to the bathroom was open but the windows in their stateroom and in the private bath opening into the stateroom were closed. While they were asleep in the stateroom which had been assigned to them, they were overcome, rendered unconscious and injuriously affected by carbon monoxide gas which had been permitted to escape from holes in the exhaust pipes into the stateroom. Yeiser, who was aboard and in personal charge of the yacht at all times during the trip, was immediately called and stated that he thought their condition was caused by carbon monoxide. The boat was at all times upon navigable waters of the United States and within the territorial boundaries of the State of Florida.

A few days after the claimants were injured, Yeiser died from causes unconnected with the accident, and claims were made against his estate for damages as a result of the injuries. Alma Chambers, as Executrix and as Ancillary Executrix of Yeiser's estate, filed her petition and libel in this Court claiming the right to limit liability, alleging that the injuries were occasioned without the privity and knowledge of Yeiser and also claiming exemption from liability upon the ground that the injuries were due wholly to an unforeseen and unavoidable accident. Monition was issued, proof of the respective claims of Mrs. Just and Miss Gruner was duly made, and both claimants filed separate answers denying and contesting the right to either exemption from or limitation of liability.

947 5. At the time the claimants were injured by the gas, the first section of the starboard exhaust pipe (Cl.'s Ex. 1) had numerous small holes in it. These holes were covered by ordinary tape which had worn through. This section of the exhaust pipe was in front of the engine room bulkhead. The center section of the port exhaust pipe (Cl.'s Ex. 5, 6) had two holes in it from which carbon monoxide gas could escape and, in my opinion, did escape. This section of the exhaust pipe was aft of the engine room bulkhead. In view of what is stated herein, and particularly in Paragraph numbered 3, Yeiser was charged with knowledge of a defective condition which existed at the time these claimants were injured and he should have realized that the use of the said stateroom by the claimants subjected them to an unreasonable risk. By his affirmative action in assigning the said stateroom to the claimants and in operating the yacht while they were in the stateroom, he failed to exercise ordinary care to avoid injuring them. As a direct and proximate result of Yeiser's negligence, the claimants were injured by breathing carbon monoxide gas which had collected in the stateroom assigned to them by Yeiser.

6. On March 1, 1936, and at the time the claimants were injured, the said yacht was unseaworthy in that the master stateroom was unsafe, the exhaust pipes of the said yacht were and had been a long time prior thereto defective and in such condition that a deleterious percentage of carbon monoxide gas was escaping therefrom into the bilge, and could, and I find did on that occasion, escape into the master stateroom. This gas, if the stateroom was unventilated, soon became dangerous to breathe.

When Henry C. Yeiser, Jr., assigned the said master stateroom to the claimants for their use, he knew, or from the facts known to him should have known, that

the said yacht was unseaworthy; that the said stateroom was unsafe and unfit for transportation of passengers occupying it; that the exhaust pipes were defective and in such condition that the carbon monoxide gas was escaping or would likely escape therefrom in dangerous quantities into the stateroom which he had assigned to the claimants.

948 7. The claimants' injuries were not due to an unforeseen and unavoidable accident but were occasioned with the privity and knowledge either direct or chargeable to Yeiser.

8. All findings of fact as stated in the conclusions of law herein found and the memorandum of the Court are incorporated in these findings of fact.

Conclusions of Law.

From the facts specifically found and set forth herein, and in the opinion heretofore filed herein, and from the evidence adduced by the parties, the Court concludes as matters of law, and therefore Orders, Adjudges and Decrees:

1. That it has jurisdiction of the subject matter, the res, and of all parties hereto in personam.

2. That Henry C. Yeiser, Jr., was guilty of actionable negligence in assigning to the claimants the said master stateroom aboard his yacht and operating the said yacht when he knew, or from the facts known to him should have known, (1) that the said yacht was unseaworthy; (2) that the said stateroom was unsafe; (3) that the use of it by the claimants subjected them to an unreasonable risk, and (4) that the exhaust pipes of said yacht were defective and in such condition that carbon monoxide

gas was escaping therefrom into the bilge, and could and did on this occasion escape into the stateroom which he had assigned to the said claimants and in which they were sleeping; and Yeiser was negligent in assigning claimants to this stateroom, without warning, into which gas was permitted to escape from the exhaust pipes of the said yacht. And the petitioner is liable to each of the said claimants for damages suffered by them as the proximate result of the said negligence.

949 3. That the several claimants' respective injuries were not due to an unforeseen and unavoidable accident, but on the contrary directly resulted from and were proximately caused by the negligence of Henry C. Yeiser, Jr.

4. That the said negligence resulting in the said injuries to the claimants, and each of them severally, was with the privity and knowledge of Henry C. Yeiser, Jr., within the meaning of the statutes conferring the right to limitation of liability; that the petitioner has failed to sustain the allegations of her petition and libel, and that the claimants and each of them have fully sustained by competent evidence the allegations of their respective answers; that the petitioner, as a matter of law and from the facts adduced before the Court, is not entitled to a decree limiting her liability as prayed for in her libel and petition, and that the said petition for limitation should be, and the same hereby is, denied.

5. That the petitioner is not entitled to an exemption from all liability, and that the relief so prayed for in the said petition and libel should be, and the same hereby is, denied.

6. That the several claimants' respective causes of action against Yeiser in personam did not abate as the

result of the death of said Henry C. Yeiser prior to the filing of the petition and libel herein seeking to exonerate his estate from liability and/or to limit that liability, but that said cause of action survives under Section 4211, Compiled General Laws, Florida, 1927:

7. That where personal injuries are negligently caused upon navigable waters of the United States and within the territorial limits of a State, and the tortfeasor thereafter dies, a State statute providing that the cause of action for such injuries shall survive will be enforced in personam in a Court of Admiralty; that the subject is maritime and local in character and the specified modification of or supplement to the rule applied in 950 Admiralty Courts when following the common law, will not work material prejudice to the characteristic features of the general maritime law, nor interfere with the proper harmony of that law in its international and interstate relations.

8. That the petitioner pay the cost of this proceeding; said costs to include, among other things, the expense of procuring photographs and the original exhaust pipes with all moving and storage charges thereon, and Court Reporter's fees, and that the claimant, Charlotte Cross Just, do have and recover of and from the said petitioner, Alma Chambers, as Executrix and as Ancillary Executrix of the Estate of Henry C. Yeiser, Jr., and her stipulator, Maryland Casualty Company, a Maryland corporation, her said costs herein taxed in the sum of \$244.50, and that the said claimant, Anne Elise Gruner, do have and recover of and from the said petitioner, Alma Chambers, as Executrix and as Ancillary Executrix of the Estate of Henry C. Yeiser, Jr., her said costs herein taxed in the sum of \$356.78, and that execution therefor shall issue in due course.

9. That this cause be set for hearing before this Court for submission of further proofs upon the issues and questions of damages sustained by each of the claimants herein with all convenient speed after due notice to the respective parties unless an appeal be duly taken herefrom pursuant to law.

Done and ordered at Miami, Florida, this 25th day of April, A. D. 1939.

JOHN W. HOLLAND,
United States District Judge.

11/em1/6

4/21/39.

951 On May 8, 1939, Libelant filed her PETITION FOR ALLOWANCE OF APPEAL, which said Petition, together with the Court's allowance of the said Appeal, is in words and figures following, to wit:

In Admiralty, No. 147-M.

(Title Omitted.)

PETITION FOR ALLOWANCE OF APPEAL

To the Honorable John W. Holland, Judge of the District Court of the United States for the Southern District of Florida:

The above-named, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., deceased, appellant, deeming herself to be aggrieved by the decree entered in the matter of the American Yacht Friendship II, in Admiralty, said decree being dated April 25, 1939, wherein the District Court denied the petitioner exemption from lia-

bility to the claimants herein as set forth in said decree, and wherein the said District Court held that the appellant was not entitled to the benefit of the Act of Congress limiting the owner's liability to the value of the vessel, as provided by Section 183 and 188, U. S. C. A., Title 46, and wherein the said District Court held the petitioner liable for the claimants' alleged damages and prays that an appeal may be allowed, and that a transcript of the record, proceedings and papers, upon which the said decree was entered, duly authenticated, may
 952 be sent to the United States Circuit Court of Appeals.

KIRLIN, CAMPBELL, HICKOX,
 KEATING & McGRANN,
 New York, N. Y.,

and

LOFTIN, CALKINS & ANDER-
 SON,

Miami, Fla.

RAYMOND PARMER,

By B. R. COLEMAN,

Doctors for the Appellant.

953. State of New York,
 County of New York, ss.

Raymond Parmer, being duly sworn, says that he is a member of the firm of Kirlin, Campbell, Hickox, Keating & McCrann, attorney and agent for Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., appellant in the above-mentioned cause; that he is authorized to make and does make this affidavit for and on behalf of and in the name of the said Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., the petitioner in the foregoing petition, and he says that he has read the foregoing petition and knows the contents thereof and that the allegations therein are true, and that the appeal sought in the said petition is not

taken for the purpose of delay but because the said Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., and deponent believes that an injustice would be done by said decree if carried into effect.

RAYMOND PARMER.

Sworn to and subscribed before me this May 5th, 1939.

(N. P. Seal)

SAMUEL L. ALBARINO,

Notary Public, State of New
York.

SAMUEL L. ALBARINO,

Notary Public, Queens County.

Queens Co. Clerk's No. 221, Reg. No. 2994.

N. Y. Co. Clerk's No. 347, Reg. No. OA243.

Kings Co. Clerk's No. 86, Reg. No. 276.

Commission expires March 30, 1940.

The appeal herein is hereby allowed this May 8th,
1939.

JOHN W. HOLLAND,

U. S. D. J.

954 On May 8, 1939, the Libelant filed her AS-
SIGNMENTS OF ERRORS in words and figures
following, to wit:

In Admiralty, No. 147-M.

(Title Omitted.)

ASSIGNMENT OF ERRORS.

Now comes Alma Chambers, as Executrix of the Es-
tate of Henry C. Yeiser, Jr., as owner of the American

yacht "Friendship II" by her undersigned proctors and assigns as the errors upon which she intends to rely in the United States Circuit Court of Appeals for the Fifth Circuit for the reversal of the interlocutory order and decree of the District Court dated April 25, 1939, and recorded in Minute Book 19 at page 171 of the records of the said District Court:

1. The District Court erred in entering its said decree dated April 25, 1939.

2. The District Court erred in failing to enter a decree for the Petitioner adjudging that Henry C. Yeiser, Jr., owner of the yacht "Friendship II" and the Petitioner as Executrix of his estate were not liable for any demand or claim whatsoever in consequence of the claims of Charlotte Gross Just and Anne Elise Gruner.

3. The District Court erred in finding, with respect to the facts, as follows:

955 A. That as a result of a survey held in December 1933 two holes were discovered, one of which was located in claimants' Exhibit 5, and the other in claimants' Exhibit 6.

B. That the then owner did not wish to incur the expense of installing a new exhaust pipe and so instructed the Captain of the vessel to repair the pipe, if possible.

C. That the said holes in the pipe were patched by means of a metal plug and a sleeve.

D. That in March 1934 the Captain of the vessel discovered a hole which was about four feet from the rear end of claimants' Exhibit 6.

E. That Yeiser, as a prospective purchaser, together with the chief engineer employed by him inspected the "Friendship II".

F. That Yeiser was told by the captain of the vessel, among other things, that the port exhaust pipe should be renewed; and that Yeiser was told by the captain of the vessel that the condition found by Captain Patton in 1933 had been repaired and is charged with knowledge of the possibility of a reoccurrence.

G. That Yeiser bought the vessel about five weeks after the time that he inspected the vessel.

H. That Yeiser issued orders to the captain of the "Friendship II" to see that the after windows in the master stateroom of the "Friendship II" were always closed.

I. That Yeiser, while aware of the danger from the gas, assumed that it was blowing in over the stern.

J. That Yeiser's chief engineer and a fishing guide were affected by carbon monoxide gas while they were cleaning fish over a latticed manhole on the after deck at the stern of the vessel.

K. That in September 1935 Yeiser's two sons were overcome by carbon monoxide while they were in the master stateroom.

L. That as a result of what happened to Yeiser's two sons Yeiser repeated his orders to keep the rear windows closed.

M. That the examination made by the chief engineer was more or less superficial, and that it was not careful and sufficient enough.

N. That Yeiser knew that the exhaust pipes had been in an imperfect condition in 1933 and that this condition had been repaired.

O. That Yeiser was aware that a dangerous condition existed in the master stateroom due to the tendency of carbon monoxide gas to enter that stateroom.

P. That Yeiser knew of the likelihood of carbon monoxide gas continuing to enter the master stateroom and that a tendency of carbon monoxide gas to enter the master stateroom constituted a dangerous condition.

Q. That on many occasions after September 1935 Yeiser talked about removing the exhaust pipes then in the boat and replacing them with exhaust pipes coming out of dummy smoke stacks on the upper deck because of the presence of carbon monoxide gas in the master stateroom.

R. That Yeiser assigned to claimants, Just and Gruner, the master stateroom for their use during the trip.

S. That there was one other stateroom which was unoccupied and unused during the trip.

T. That on the morning of March 2nd, shortly before the vessel reached Miami, the claimants were discovered in an unconscious condition.

U. That while the claimants, Just and Gruner, were asleep in the stateroom which had been assigned to them they were overcome, rendered unconscious and injuriously affected by carbon monoxide gas which had been permitted to escape from holes in the exhaust pipes into the stateroom.

V. That at the time the claimants were injured by gas claimants' Exhibit 1 had numerous small holes in it, which holes were covered with ordinary tape which had worn through.

W. That the center section of the port exhaust pipe, claimants' Exhibits 5 and 6, had two holes in it from which carbon monoxide gas could and did escape.

X. That the manner of attention given to the claimants on the yacht after they were discovered indicates that their condition was caused by carbon monoxide poisoning.

Y. That Mr. McKay, together with Mr. Yeiser and members of the crew, treated the case as one of gas poisoning.

Z. That the amount of drinking done by the claimants was not sufficient to cause unconsciousness.

AA. That Mrs. Just's condition was indicated on the hospital records as gas poisoning rather than alcoholism and that she was so treated in the hospital.

BB. That it is reasonable to suppose that if the real condition of the pipes had been ascertained in September 1935 their condition in February 1936 might have been anticipated.

CC. That the real condition of the pipes was not definitely ascertained in September 1935.

DD. That there was a possibility that the pipes were leaking in September 1935.

EE. That the claimants were not licensees.

FF. That in September 1935 Yeiser had a duty to ascertain what the condition of the pipes was in February 1936.

4. The District Court erred in finding that Henry C. Yeiser, Jr., was charged with the knowledge that a defective condition of the exhaust pipes existed at the time the claimants were injured.

5. The District Court erred in finding that Henry C. Yeiser, Jr., should have realized that the use of the after stateroom by the claimants subjected them to an unreasonable risk.

6. The District Court erred in finding that Henry C. Yeiser, Jr., by his affirmative action in assigning the after stateroom to the claimants and in operating the yacht while they were in the stateroom, failed to exercise ordinary care to avoid injuring them.

7. The District Court erred in finding that as a direct and proximate result of Henry C. Yeiser, Jr.'s negligence the claimants were injured by breathing carbon monoxide gas in the stateroom assigned to them by Mr. Yeiser.

8. The District Court erred in finding that on March 1, 1936, and at the time the claimants were injured, the yacht was unseaworthy in that the master stateroom was unsafe, the exhaust pipes of the yacht were and had been for a long time prior thereto defective and in such condition that a deleterious percentage of carbon monoxide gas was escaping therefrom into the bilge, and could and did on that date escape into the master stateroom.

9. The District Court erred in finding that when Henry C. Yeiser, Jr., assigned the master stateroom to

the claimants for their use he knew or from the facts known to him should have known that the yacht was unseaworthy.

10. The District Court erred in finding that when Henry C. Yeiser, Jr. assigned the said master stateroom to the claimants, he knew, or from the facts known to him should have known, that the stateroom was unsafe and unfit for transportation of passengers occupying it.

959 11. The District Court erred in finding that when Henry C. Yeiser, Jr. assigned the said master stateroom to the claimants, he knew, or from the facts known to him should have known, that the exhaust pipes were defective and in such condition that carbon monoxide gas was escaping or would likely escape therefrom in dangerous quantities into the stateroom which he had assigned to the claimants.

12. The District Court erred in finding that the claimants' injuries were not due to an unforeseen or unavoidable accident but were occasioned with the privity and knowledge either direct or chargeable to Henry C. Yeiser, Jr.

13. The District Court erred in not finding as facts the following:

Yeiser was by reason of alcoholism incompetent and the control of his effects had been taken from him and given to a guardian appointed by the Court of Ohio (McKay, 38, 39). The Friendship II left Miami at about 5:30 P. M. on Friday, February 28th and arrived at Featherbed Shoals which are about fourteen miles from Miami at about 8:10 P. M. on the same day. The vessel remained at anchor for the night and on the morning of

Saturday, February 29th, at about 6:50 A. M. proceeded a further distance of about nine miles to Card Sound, where she arrived at 8:30 A. M. The vessel remained at anchor at Card Sound during Saturday, February 29th, and Sunday, March 1st, up to 7:30 P. M., when she proceeded on the return trip to Featherbed Shoals. She arrived at Featherbed Shoals at about 9:15 P. M. Sunday, and anchored. On Monday morning, at about 8:50 A. M., the vessel proceeded from Featherbed Shoals to Miami where she arrived at 9:10 A. M. On Saturday morning between 6:50 A. M. and 8:30 A. M., while the vessel was proceeding from Featherbed Shoals to Card Sound, claimants, Just and Gruner, occupied the master state-room (Roberts, 565). They arose at some time subsequent to the vessel's anchoring at 8:30 (Roberts, 565).

960 Neither of the claimants were affected by motor fumes during the trip from Featherbed Shoals to Card Sound (Roberts, 565), or otherwise made ill (Roberts, 565). On Saturday and Sunday, while the vessel was anchored at Card Sound, Mrs. Just and Miss Gruner went fishing in small boats (McKay, 22). On Sunday-afternoon the waters were very rough and both claimants became seasick. Mrs. Just was more seasick than Miss Gruner. She was green in the face and vomited (McKay, 55, 56, 75), (Roberts, 544). She was advised to take some medicine and she said that she would (Roberts, 545). Accordingly, both claimants returned to the Friendship II where they first had a drink of brandy and then had dinner (McKay, 41). After returning to the vessel, the claimants did not complain further of suffering from seasickness (McKay, 75). After dinner the claimants sat in the living room playing bridge and then sat on the after deck for an hour or two (McKay, 27). After that they left Mr. Yeiser and Mr. McKay, saying that they were tired, and they were not seen again until the next morning when they were found by Mr. McKay in their beds in the master state-

room (Mr. McKay, 27). On Monday morning, while the vessel was on its return trip to Miami, and about an hour before it arrived there, Mr. McKay opened the door to the master staterooms where the claimants then were lying in their beds (McKay 28), (Roberts, 549). At the time that he did so all the windows in the stateroom and also the windows in the private bathroom connecting with the stateroom were closed (McKay, 29). Mr. McKay then entered the room (McKay, 28). When he did so there was not any unusual or peculiar odor and there was not any unusual color to the atmosphere in the room. There was not any smoke or fumes visible in the master stateroom (McKay, 87, 88). The conditions were such as to cause Mr. McKay to conclude that because of the closed doors and windows the supply of oxygen was insufficient, (McKay, 74, 88, 89). While Mr.

McKay was in the room the claimants did not
961 respond to him either when he spoke to them

or when he shook them (McKay, 28, 29). Both

claimants were breathing naturally, but Mrs. Just's mouth hung down a little unnaturally (McKay, 28, 29). Other than this Mr. McKay did not notice the details of their appearance (McKay, 70). Mr. Yeiser was called to the

room and tried to waken the claimants, but they did not awaken (McKay, 29). Each claimant was carried to the

upper deck (McKay, 29). Mrs. Just was put on a couch

on the after deck (Roberts, 552, 553). Miss Gruner

was put on a bed in Mr. Yeiser's room (Roberts, 552).

A physician, Dr. Howell, was called to attend them and

he arrived within a half hour after the vessel docked

(Roberts, 554). A nurse came also. While Miss Gruner

was being carried upstairs, her head bumped against

something. She then mumbled something. (Roberts, 552).

A few minutes after being brought to the upper deck

and before the doctor arrived, Miss Gruner was talking

(Roberts, 555). When the doctor first examined her, her

face was pale and the skin around her mouth was bluish

(Howell, 247). There was not any redness on the skin of her face (Howell, 247). Dr. Howell gave Miss Gruner a hypodermic injection of caffeine sodium benzoate and at that time she made an audible and intelligible remark to the physician (Howell, 246). After that and during the morning while the physician was attending her, she talked some more (Howell, 248). The physician also administered to Miss Gruner a mixture of oxygen and carbon dioxide. The physician left Miss Gruner at about 2:00 o'clock in the afternoon in order to bring Mrs. Just to the hospital. He returned later in the afternoon and found Miss Gruner in Mr. Yeiser's bed and instructed her to leave the vessel. She said she would not leave and that she was going to spend the night on the vessel (Howell, 287). During the afternoon and 962 while she was in Mr. Yeiser's room she was drinking something from a glass (Roberts, 559). The nurse who had come aboard in the morning remained until 5:00 P. M. when her place was taken by another nurse (Ollis, 667). The latter nurse found Miss Gruner still lying in Mr. Yeiser's bed (Ollis, 668). From 6:00 until about 10:00 P. M. nurse Ollis served Miss Gruner three or four drinks of liquor (Ollis, 668). Nurse Ollis requested claimant Gruner to leave the vessel and Miss Gruner said she did not wish to do so. (Ollis, 669). Miss Gruner was escorted from the vessel by the vessel's captain and Mr. McKay (Ollis, 669), (Roberts, 560). The nurse who attended in the morning and who went off duty at 6:00 P. M. was dead at the time of the trial (Howell, 247). After leaving the vessel and on the same night, Miss Gruner was examined by Dr. Foxworthy at the home of Mrs. Just (Foxworthy, 169). At that time she said she was perfectly all right and did not need any medicine (Foxworthy, 169). Dr. Foxworthy found that she was excited, that her heart was faint, that her respiration was fast and that her reflexes were exaggerated and she had the same symptoms as he

had previously found on his examination of claimant Just, except that they were in milder form (Foxworthy, 169). When Dr. Howell first attended Mrs. Just on the vessel she rolled over and looked up at him (Roberts, 556). Her complexion was pale but around her mouth there was a bluish discoloration (Howell, 247). There was not any redness on the skin of the face (Howell, 247). The physician gave her a hypodermic injection of caffeine sodium benzoate of $7\frac{1}{2}$ grains (Howell, 245). When the doctor first attempted to give the injections Mrs. Just pulled her arm back and objected (Howell, 245). She also pulled the covers over her arm (Howell, 246). Within a half hour after the physician arrived he administered to Mrs. Just a mixture of carbon dioxide and oxygen (Howell, 249). When the physician attempted to administer this to Mrs. Just she moved her head away from the oxygen funnel and her head had to be steadied in order to make her breathe the mixture (Howell, 250). During the same morning, while the physician was there, Mrs. Just vomited into a basin held by the nurse (Howell, 251). She directed the vomitus away from her person and did not soil her bed clothes (Howell, 253). Mrs. Just did not talk to the physician, but she acted resistantly to what he was doing for her treatment (Howell, 249). At the times that the physician saw her on the vessel she was, in his opinion, semi-conscious (Howell, 370). In the afternoon at about 2 o'clock Mrs. Just was taken to St. Francis hospital at Miami Beach in an ambulance and Dr. Howell accompanied her (Howell, 256, 305, 306). Mr. McKay first thought that claimants were suffering from a lack of oxygen (McKay 74, 88, 89). Thereafter, and before the arrival of Dr. Howell, Mr. McKay and Mr. Yeiser conferred and expressed the opinion that claimants might be suffering from carbon monoxide poisoning (McKay, 31, 32, 33). Neither Mr. McKay nor Mr. Yeiser had had medical training. Mr. Yeiser said that the reason

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he thought that it was carbon monoxide poisoning was that the vessel's motors had been running that morning (McKay, 935). When Dr. Howell came to the vessel Mr. Yeiser informed him that he thought it was a carbon monoxide case because the motors were running that morning (McKay, 35). Mr. McKay also informed Dr. Howell that the cases involved carbon monoxide gas (Howell, 244). Dr. Howell accepted the statements which Mr. Yeiser and Mr. McKay made to him and ordered brought to the vessel a tank of oxygen and carbon dioxide (Howell, 249; 256, 302.) As a result of what he had been told and what he found he believed that both

964 claimants were suffering from carbon monoxide poisoning (Howell, 256, 363). Accordingly, he treated them for that on the vessel (Howell, 302). At the same time he believed there was a great probability of alcoholism (Howell, 256, 363). When the doctor brought Mrs. Just to the hospital he recorded in the hospital record that her chief complaint was "apparent CO² poisoning", that the "working diagnosis" was "CO² poisoning and that his "impression" was "CO² poisoning." In using the symbol CO² he meant to describe carbon monoxide gas. He also recorded that he found Mrs. Just on the vessel in a semi-unconscious condition; that she had moderate cyanosis, increased respiration, rapid pulse and that he had received a history, i. e., he had been told, of her "apparently being overcome by fumes from the boat's engines." After writing the words "semi-unconscious" he drew a line through the word "semi." He then proceeded to give Mrs. Just treatment which he believed was efficacious in treating alcoholism (Howell, 257, 258). At about 4:00 P. M., and in the absence of Dr. Howell, Mrs. Just was seen in the hospital by Dr. Foxworthy (Foxworthy, 162). Dr. Foxworthy was a personal friend of Mrs. Just's and he was known to her as "Uncle Frank" (Foxworthy, 160). Before he saw her in the hospital he had been told that

she had been gassed (Foxworthy, 163). The symptoms that he observed were unconsciousness, a weak pulse, weak respiration, a cold and clammy skin, which had an ashen and a bluish color (Foxworthy, 163, 166). He was of the opinion that she was then at a later stage of a previous carbon monoxide poisoning (Foxworthy, 166).

965 Dr. Harris, who examined Mrs. Just between 8:00 and 9:00 P. M. (Harris, 773) found that on physical examination she was essentially normal (Harris, 773). He was not able as a result of his examination alone to determine what was the cause of her then condition (Harris, 773). He had been informed that it was suspected that Mrs. Just had been exposed to carbon monoxide gas (Harris, 776). On being so informed he was of the opinion that she had probably suffered from carbon monoxide poisoning (Harris, 724). A diagnosis of carbon monoxide poisoning was not actually confirmed, but in view of the history, carbon monoxide poisoning was suspected (Harris, 778). Therefore, he gave her treatment on the assumption that she had been poisoned by carbon monoxide gas (Harris, 779, 782). He was also informed that there was a possibility that the patient's condition was due to alcohol (Harris, 775). He saw no signs of alcohol on the patient at the time of his examination (Harris, 778). He was of the opinion that alcohol also might have been responsible for the condition in which he found Mrs. Just (Harris, 780). On the day following the return of the vessel to Miami, one Roderick went on board the vessel in order to estimate the cost of running the vessel's exhaust pipes out through the vessel's smoke stack instead of through the bilges as they then were (Roderick, 93). While on the vessel he and the Chief Engineer examined the existing exhaust pipes in order to see if there was anything wrong with them (Roderick, 94). They first examined the exhaust pipes without the motors running. There was no noticeable leak or apparent place where there had been a

leak (Roderick, 94). The starboard engine was then started and Roderick looked at the starboard exhaust pipe. There was no sign of any leak whatsoever (Roderick, 95). The port engine was then started (Roderick, 95), and when this was done water and motor
 966 fumes came from a hole in the pipe. This was the only hole discovered in the port exhaust pipe (Roderick, 95). It was situated in that part of the port exhaust pipe which was under the forward corner of the port stateroom (Roderick, 95), and was about four feet from one end of Exhibit 6 (Roderick, 95, 98). Roderick also found another place in the port exhaust pipe where there was a plug. It was leaking water only in a slow drip. Motor fumes were not coming from this place (Roderick, 98, 99). This place was about two and one-half feet from the other end of Exhibit 6 (Roderick, 102). Roderick took out the plug and covered the resulting hole with a rubber patch and clamp (Roderick, 97). He also put a similar rubber patch over the hole at the other end of Exhibit 6 (Roderick, 97). Blood that has merely lost its oxygen and is in the veins takes on a bluish tint and causes a bluish color of the skin called cyanosis (Henderson, 18). Blood in which carbon monoxide has displaced oxygen by combining with the haemoglobin has a bright cherry red color and is much brighter than arterial blood (Henderson, 18). It causes the skin to be red in color (Howell, 367, 368), (Foxworthy, 223, 224). They may also have red spots on the skin (Foxworthy, 222, 223). Cyanosis or a bluish color or tinge of the skin is not produced by carbon monoxide poisoning (Henderson, 18). Thirty percent saturation of blood with carbon monoxide gas is not sufficient to cause unconsciousness (Henderson, 5, 6).

14. With regard to Yeiser's knowledge, both actual and constructive, the District Court erred in not finding as facts the following:

967 Yeiser did not have actual knowledge at any time prior to March 2nd that the exhaust pipes were in a dangerous condition or were likely to be in such dangerous condition. Prior to March 2nd, 1936 Yeiser knew of only one occasion when motor fumes had entered the master stateroom, and that was in September 1935. He concluded that this was caused by motor fumes coming from the exhaust outlet over the stern of the vessel and through open windows. He was correct and justified in this conclusion and acted as a reasonably prudent man in so concluding. The same thing had occurred on another vessel which Yeiser had owned. There was nothing with respect to the pipes in September 1935 which indicated that they were then leaking or would likely leak in the future. The exhaust pipes carried water and when leaking water would leak from them. When the chief engineer inspected the pipes in September 1935 he used the same method of inspection as was used following March 2, 1936 by Roderick. At the time of Roderick's inspection following March 2, 1936, water and gas were leaking from a hole in one of the pipes. At the time of the chief engineer's inspection in September 1935 the pipes were not leaking water or gas.

Previous to September 1935 Yeiser had not been informed by anyone, nor was there any other reason for his knowing, that at the time that he purchased the vessel, and thereafter, there was any leak in the exhaust pipes or anything about them made it likely that they would leak in the future. Previous to the time of the purchase of the vessel Yeiser had not been informed that the exhaust pipes were leaking or that there was anything about them which made it likely that they would leak in the future.

968 15. The District Court erred in finding as a conclusion of law that Henry C. Yeiser, Jr. was guilty of actionable negligence in assigning to the claimants the Master stateroom aboard his yacht and operating the said yacht when he knew or from the facts known to him should have known, (1) that the said yacht was unseaworthy; (2) that the stateroom was unsafe; (3) that the use of the stateroom by the claimants subjected them to an unreasonable risk, and (4) that the exhaust pipes of the yacht were defective and in such condition that carbon monoxide gas was escaping therefrom into the bilge and could and did on this occasion escape into the stateroom which Henry C. Yeiser, Jr. had assigned to the claimants and in which they were sleeping.

16. The District Court erred in finding as a conclusion of law that Henry C. Yeiser, Jr. was negligent in assigning the claimants to the master stateroom, without warning, into which gas was permitted to escape from the exhaust pipes of the yacht.

17. The District Court erred in finding as a conclusion of law that the petitioner, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., is liable to each of the claimants, Charlotte Cross Just and Anne Elise Gruner for damages suffered by them as a proximate result of the alleged negligence of Mr. Yeiser.

18. The District Court erred in finding as a conclusion of law that the several claimants' respective injuries were not due to an unforeseen and unavoidable accident, but on the contrary directly resulted from and were proximately caused by the negligence of Henry C. Yeiser, Jr.

19. The District Court erred in finding as a conclusion of law that the negligence resulting in the injuries

to the claimants and each of them severally, was with the privity and knowledge of Henry C. Yeiser, Jr. within the meaning of the statutes conferring the right to limitation liability.

20. The District Court erred in finding as a conclusion of law that the petitioner failed to sustain the allegations of her petition and libel, and that the claimants and each of them have fully sustained by competent evidence the allegations of their respective answers.

969 21. The District Court erred in finding as a conclusion of law that the petitioner, as a matter of law and from the facts adduced before the Court, is not entitled to a decree limiting her liability as prayed for in her libel and petition.

22. The District Court erred in finding as a conclusion of law that the petition for limitation should be denied.

23. The District Court erred in finding as a conclusion of law that the petitioner is not entitled to an exemption from all liability and denying the relief prayed for in the petition and libel.

24. The District Court erred in finding as a conclusion of law that the respective causes of action of the claimants against Henry C. Yeiser, Jr. in personam did not abate as a result of the death of the said Henry C. Yeiser, Jr., prior to the filing of the petition and libel seeking to exonerate his estate from liability and/or to limit that liability.

25. The District Court erred in finding as a conclusion of law that the cause of action of the claimants survived under Section 4211, Compiled General Laws of Florida 1927.

26. The District Court erred in finding as a conclusion of law that where personal injuries are negligently caused upon navigable waters of the United States and within the territorial limits of a State, and the tortfeasor thereafter dies, a State statute providing that the cause of action for such injuries shall survive, will be enforced in personam in a Court of Admiralty.

27. The District Court erred in finding as a conclusion of law that where personal injuries are negligently caused upon navigable waters of the United States and within the territorial limits of a State, and the tortfeasor thereafter dies, that the subject is maritime and local and in character and specified modification of or supplement to the rule applied in Admiralty Courts when following the common law, will not work material prejudice to the characteristic features of the general maritime law nor interfere with the proper harmony of that law in its international and interstate relations.

28. The District Court erred in finding as a conclusion of law that the claimant, Charlotte Cross Just should have and recover of and from the petitioner, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr. and her stipulator, Maryland Casualty Company, for costs taxed in the sum of \$244.50.

29. The District Court erred in finding as a conclusion of law that the Claimant, Anne Elise Gruner, should have and recover of and from the petitioner, Alma Chambers, as Executrix and as Ancillary Executrix of the Estate of Henry C. Yeiser, Jr., costs taxed in the sum of \$356.78.

30. The District Court erred in finding as a conclusion of law that this cause should be set for hearing before the District Court for submission of further

proofs upon the issues and questions of damages sustained by each of the claimants.

(31. The District Court erred in failing to find that if Yeiser was liable to the claimants his liability in personam ended at the time of his death.

32. The District Court erred in failing to find that the claimants were gratuitous licensees and as to them had no duty to make the vessel safe or to inspect the vessel to discover possible, or even probable, dangers.

33. The District Court erred in failing to enter a decree in favor of the petitioner, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., filed on April 25, 1939, adjudging that the alleged accident to the claimants did not occur with the privity and knowledge of Henry C. Yeiser, Jr., within the meaning of the statutes conferring the right to limitation of liability.

34. The District Court erred in not finding and decreeing that the claimant, Charlotte Cross Just, failed to sustain by competent evidence the allegations of her claim and answer filed on October 23, 1936.

35. The District Court erred in not finding and decreeing that the claimant, Anne Elise Gruner, failed to sustain by competent evidence the allegations of her claim and answer filed on October 23, 1936.

36. The District Court erred in not finding and decreeing as a matter of law and from the facts adduced before the Court, that the petitioner, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., is entitled to a decree limiting her liability as prayed for in her libel and petition filed on.

37. The District Court erred in not finding and decreeing that if he found that Henry C. Yeiser, Jr., was liable for any demand or claim whatsoever in consequence of the claims of Charlotte Cross Just and Anne Elise Gruner, that the said Henry C. Yeiser, Jr., and the petitioner, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., should be discharged from said liability by the surrender of the said yacht and the limitation of their liability to its value.

B. R. COLEMAN,
 RAYMOND PARMER,
 For Kirlin, Campbell, Hickox,
 Keating & McGrann.
 and
 LOFTIN, CALKINS & ANDER-
 SON,
 Proctors for Petitioner-Appellant.

We acknowledge receipt of a copy of the foregoing Assignments of Errors, this May 8th, 1939.

FORDYCE, WHITE, MAYNE,
 WILLIAMS & HARTMAN,
 St. Louis, Missouri.
 and
 EVANS, MERSHON & SAW-
 YER,
 Miami, Florida.

By W. O. MEHRTENS,
 Proctors for the Appellees.

On May 8, 1939, the Libelant filed NOTICE OF APPEAL together with RECEIPT of Proctors for the Claimants, in words and figures following, to wit:

973

NOTICE OF APPEAL.

In the District Court of the United States for the Southern District of Florida, Miami Division.

In Admiralty, No. 147-M.

In the Matter of the Petition of Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., as Owner of the American Yacht Friendship II, for Limitation of Liability.

To: Evans, Mershon & Sawyer and Fordyce, White, Mayne, Williams & Hartman, Proctors for Claimants, Charlotte Cross Just and Anne Elise Gruner:

Please take notice that the petitioner, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit, from that certain interlocutory decree entered herein on April 25, 1939, which denies the petitioner exemption from liability for the alleged injuries of the claimants, Charlotte Cross Just and Anne Elise Gruner, and which also holds that the Petitioner is not entitled to the benefit of the Act of Congress limiting her liability to the value of the vessel and that

974 petitioner is liable to the said claimants for their damages.

Dated at Miami, Florida, this May 8, 1939.

KIRLIN, CAMPBELL, HICKOX,
KEATING & McGRANN,
New York, N. Y.,
and

LOFTIN, CALKINS & ANDER-
SON,
Miami, Florida.

RAYMOND PARMER,
By B. R. COLEMAN,
Proctors for the Petitioner.

Received a copy of the foregoing notice this May 8th,
1939.

FORDYCE, WHITE, MAYNE,
WILLIAMS & HARTMAN,
St. Louis, Missouri,
and

EVANS, MERSHON & SAW-
YER,
By W. O. MEHRTENS,
Proctors for the Claimants.

On May 8, 1939, the District Judge entered an Order
EXTENDING THE TIME TO FILE THE TRANSCRIPT
OF THE RECORD TO JULY 11, 1939, the original of
which said Order has been transmitted to the Clerk of the
Circuit Court of Appeals:

On May 8, 1939, CITATION ON APPEAL was issued,
the Original of which has been transmitted to the Clerk
of the Circuit Court of Appeals.

On July 5, 1939, the District Judge entered an Order EXTENDING THE TIME TO FILE THE TRANSCRIPT OF THE RECORD TO AUGUST 3, 1939, the original of which Order has been transmitted to the Clerk of the Circuit Court of Appeals.

ORDER CERTIFYING ORIGINAL EXHIBITS TO THE APPELLATE COURT.

In the District Court of the United States for the Southern District of Florida, Miami Division.

Order Certifying Original Exhibits to C. C. A. Filed Aug. 2nd, 1939.

In Admiralty, No. 147-M.

975

Filed Miami, Fla., Jul. 20, 1939.

Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., as Owner of the American Yacht "Friendship II" for Limitation of Liability, Appellant, vs. Charlotte Cross Just and Anne Elise Gruner, Appellees.

Upon application of Loftin, Calkins & Anderson, of counsel for the Petitioner-Appellant, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., as owner of the American Yacht "Friendship II", in the above-entitled cause, this matter was heard for the purpose of completing the transcript of the record for use on the appeal heretofore entered in this cause.

This Court is of the opinion that it is necessary and proper that the following original exhibits introduced in

evidence in said cause should be inspected in the United States Circuit Court of Appeals for the Fifth Circuit upon the said appeal, to wit:

Claimants' Exhibits 1 to 6 (6 pieces of pipe).

Claimants' Exhibits 1 (7) and 2 (8), (photographs of Yacht).

Claimants' Exhibits 9-A to 9-L, (Hospital Records), Personal History signed by Dr. Spencer Howell).

Claimants Exhibit No. 12 for identification (Letter dated October 8, 1936, from John K. Woolslair to Captain Fred E. Roberts).

976 Claimants' Exhibit No. 13 for identification (Copy of letter dated Jan. 3, 1934, addressed to Appleton & Cox, Atlanta, Georgia, concerning repairs to Yacht).

Petitioner's Exhibit No. 1, (Diagram showing Exhaust Pipe and hole).

Petitioner's Exhibit No. 2, (Log Book entries).

Petitioner's Exhibit No. 3, (Sketch of Yacht).

Petitioner's Exhibits Nos. 4-A and 4-B, (Charts).

Petitioner's Exhibit No. 5, (Measurements of Yacht Friendship II prepared by Captain J. N. Patton).

Petitioner's Exhibits Nos. 6-A, 6-B, and 6-C, (Photostatic copies of Bills for provisions).

Petitioner's Exhibit No. 7 (Sample of signature).

Petitioner's Exhibit No. 8 (Letter dated January 27, 1934, addressed to William Gardner & Company, New York, N. Y., and signed Captain W. D. Archer).

• It Is, Therefore, Ordered that the Clerk of this Court shall safely keep the said original exhibits until the transcript of the record is forwarded to said Appellate Court, and thereupon, shall attach his authentication certificate to each of said original exhibits and send the same, by United States Mail, to the Clerk of the said Appellate Court, at New Orleans, Louisiana; except that Claimants' Exhibits Nos. 1 to 6, the same being pieces of the exhaust pipe, shall be retained by the Clerk of this Court to be available to Counsel in preparing briefs, and forwarded to the Clerk of the Circuit Court of Appeals after all briefs have been filed in that Court; the said original exhibits to be returned to the Clerk of this Court upon final disposition of the said appeal in the said Appellate Court.

• It Is Further Ordered that this Order be transmitted to the said Circuit Court of Appeals with the said exhibits.

• Ordered and done at Miami, Florida, this July 20th, 1939.

JOHN W. HOLLAND,
United States District Judge.

977 District Court of the United States for the Southern District of Florida.

United States of America,
Southern District of Florida.

I, EDWIN R. WILLIAMS, Clerk of the District Court of the United States for the Southern District of Florida, do hereby certify that the foregoing pages numbered 1 to 974, inclusive, contain and form a full, true and complete transcript of the record and proceedings in the case entitled Alma Chambers, as Executrix of the Estate of Henry Yeiser, Jr., as owner of the American Yacht "Friendship II" for limitation of liability, Appellant, versus Charlotte Cross Just and Anne Elise Gruner, Appellees, No. 147 Miami Admiralty, of the docket of this Court, as made up in accordance with Rule 49 of the Admiralty Rules.

Witness my hand, and the seal of said Court, at the City of Miami, Florida, this 27th day of July, A. D. 1939.

EDWIN R. WILLIAMS,
Clerk.

By GEO. W. LITCHFORD,
Deputy Clerk.

Citation omitted from the printed record, the original thereof being on file in the office of the Clerk of the U. S. Circuit Court of Appeals.

* * * * *

[fol. 863] That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of January 31st, 1940

No. 9218

ALMA CHAMBERS, as Executrix of the Estate of Henry C. Yeiser, Jr., as Owner of the American Yacht "Friendship II",

versus

CHARLOTTE CROSS JUST and ANNE ELISE GRUNER

On this day this cause was called, and, after argument by Raymond Farmer, Esq., for appellant, and M. L. Mershon, Esq., for appellee, was submitted to the Court.

[fol. 864] IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 9218

ALMA CHAMBERS, as Executrix of the Estate of Henry C. Yeiser, Jr., as Owner of the American Yacht Friendship II, Appellant,

versus

CHARLOTTE CROSS JUST and ANNE ELISE GRUNER, Appellees
Appeal from the District Court of the United States for
the Southern District of Florida

Before Foster, Sibley and Hutcheson, Circuit Judges

OPINION OF THE COURT and DISSENTING OPINION OF HUTCHESON, CIRCUIT JUDGE, THERETO—Filed June 21, 1940

SIBLEY, Circuit Jrdge:

This case involves claims by the appellees, Charlotte Cross Just and Anne Elise Gruner, for damages for personal injuries due to carbon monoxide gas poisoning occurring on board the yacht Friendship II, owned at the time by Henry C. Yeiser, Jr. The yacht was built in New Jersey, but it does not appear where she is enrolled. The suit began in the United States District Court for the Southern Dis-

[fol. 865] trict of Florida, Miami Division, as a petition for limitation of liability filed by appellant as duly qualified executrix of Yeiser's estate. The petition denied liability and in the alternative claimed a limitation to the value of the offending vessel. This appeal, taken under the authority of the Act of April 8, 1926, c. 102, 28 U. S. C. A. Sec. 227, is from an interlocutory decree rendered on the merits in favor of the claimants and denying limitation.

From Friday, February 28, until Monday, March 2, 1936, the appellees were guests on board the Friendship II on a fishing trip and cruise. They were at all times within the territorial limits of the State of Florida. The appellees had been assigned a double stateroom at the stern of the vessel directly above the bilge, through which ran the exhaust pipes from the yacht's engines. On Monday morning, when the yacht was nearing Miami on the return trip, the appellees were discovered unconscious in their beds. They were treated upon their return, but allegedly received injuries of a permanent as well as of a temporary nature. Five days after the return, from causes unrelated to the accident, Yeiser died. These claims were filed against his estate.

The appellant has questioned the sufficiency of the evidence to support the findings of the District Judge. The Friendship II is a cruising houseboat yacht powered by twin gasoline motors. At the time of the accident, there were several holes in both the port and the starboard exhaust pipes which passed directly through the bilge. The windows of the stateroom which the appellees were using were closed, but in the walls were a number of vents and openings so designed that air from the bilge would circulate through the stateroom. The District Judge found that carbon monoxide gas in the form of exhaust fumes which were escaping from the pipes collected in the bilge and, passing through the vents into the stateroom, overcame the appellees while they were asleep and were the proximate cause of the injuries complained of. These findings were based on the oral testimony of the witnesses taken in open court. The District Judge had the opportunity which we do not have of facing each witness and of judging at first hand the weight of what he had to say. Every finding of fact which the judge made is supported by evidence. Where there is a conflict of evidence we are not in position to say that the appellees' evidence is unworthy of belief.

Colvin v. Kokusai Kisen Kabushiki Kaisha, 5th Cir., 72 F. (2d) 44.

A second assignment of error is to the effect that Yeiser owed no duty to make the yacht safe for the appellees, they being mere gratuitous invitees on board the vessel. Yeiser was familiar with gasoline motors. He had been told at the time he purchased the *Friendship II* that the port exhaust pipe should be renewed. Twice before, to Yeiser's knowledge, persons aboard the yacht had been affected by carbon monoxide gas, the last time being in September, 1935, when Yeiser's two sons were overcome in the same stateroom. At that time, a more or less superficial investigation having been made, no defects were discovered. Assuming that the gas was blowing in over the stern, Yeiser simply repeated a previous order to keep the rear windows closed. Nevertheless, he had been put on notice of the defective condition of the pipes and of the tendency of the gas to enter the stateroom. He was cognizant of the ultimate cause and of the result, and, whether or not he properly connected the two, he must be held to have known of the dangerous condition existing aboard the vessel and of the possibility of injury to the appellees at the time he assigned the stateroom to them. Knowing of the condition, he is responsible for failure to remedy the defect or at least to warn the appellees of its existence. *Restatement of Torts*, Sec. 342.

Responsibility for the injury having been established, it [fol. 867] remains to be determined whether the appellant is entitled to a limitation of liability. Since a proper inspection of the vessel would have shown the defective condition of the pipes, and Yeiser was himself present and in charge, the injuries were not occasioned without the knowledge or privity of the shipowner. Because he failed to make such an inspection, he may not have limitation. *The Republic*, 61 Fed. 109; *Christopher v. Grueby*, 40 F. (2d) 8.

The question principally contested in the case concerns the effect of Yeiser's death upon the claimants' causes of action *in personam*. It is admitted that the action in rem survives and that the claimants may recover up to the value of the ship. *The Ticeline*, 208 Fed. 670. However, the common law rule is that a personal right of action abates upon the death of either party, and there are admiralty precedents to the same effect. *Crapo vs. Allen*, Fed. Cas. No. 3, 360; *In re Statler*, 31 Fed. (2d) 767. Upon the basis of

these precedents, the appellant has strenuously questioned the applicability of a decision of the Supreme Court of Florida holding that the death of the tortfeasor does not extinguish a right of action for the recovery of purely compensatory damages for personal injuries. *Waller vs. First Savings & Trust Co.*, 103 Fla. 1025. The decision was by a divided Court, and based upon the provisions of the local constitution and a local statute. The argument challenges the use of State laws and decisions as rules of decision in cases within the maritime jurisdiction of the federal courts and urges that the subject is properly one which requires uniformity.

It is no longer questionable that a tort occurring upon navigable waters of a State of the United States is within the maritime jurisdiction of the federal courts. *De Lovio vs. Boit*, Fed. Cas. No. 3, 776; *Waring vs. Clarke*, 5 How. 441; *The Propeller Genesee Chief vs. Fitzhugh*, 12 How. [fol. 863] 443. Nor may the power of Congress, by virtue of the paramount maritime jurisdiction of the United States, to prescribe substantive rules of law with respect to maritime torts be challenged. *Detroit Trust Co. vs. The Barlum*, 293 U. S. 21. Where the injured person dies as the result of an injury the common law afforded no action for the wrong either to the estate of the deceased or to his dependents. Lord Campbell's Act in England, and similar statutes in the States of the United States have changed this rule, and it was never the rule of the civil law. Admiralty courts have held that where the law of the country of the ship's flag allows recovery for a wrongful death on land a libel will lie for such a death at sea. *The Hamilton*, 207 U. S. 398, *La Burgogne*, 210 U. S. 94. The matter is now put under a uniform rule by federal statute. 46 U. S. C. A. Sects. 761-768.* Congress has made no statute

* The federal statute, like most of the death statutes, does not provide for a survival of the injured person's right of action but gives a new right of action which arises out of the death, in favor of named beneficiaries, the damages to be measured by their pecuniary loss. The suit is then not for a personal injury, but for a property damage. The question of survival vel non of a personal right of action is not involved. *Re Meekin*, 164 N. Y. 145, 79 A.S.R. 635. Decisions about death claims sustained in admiralty are not at all in point.

touching the case where the tortfeasor dies before suit or judgment. Here also the common law held that there could be no recovery against the personal representative. The reason given by Blackstone, 3 Comm. *302, is: "And it shall never be revived either by or against the executors or other representatives; for neither the executors of the plaintiff have received, nor those of the defendant have committed, in their own personal capacity any manner of wrong or injury." Chancellor Kent thus states it, 2 Comm. Holmes 12th Ed., *416, "Causes of action arising *ex delicto*, for wrongs for *personal* injuries, die with the person and do not survive against his representatives. Executors and administrators are the representatives of the personal [fol. 869] *property* of the deceased, and not of his wrongs, except so far as the tortious act complained of was beneficial to his estate." *Crapo vs. Allen*, and *Re Statler*, *supra*, assert that in admiralty also this rule applies. We have found no case to the contrary.

A personal injury inflicted by negligence on shipboard and on navigable waters is undoubtedly a maritime tort. *Atlantic Transport Co. vs. Imbrovek*, 234 U. S. 63. In the present case the ship was in fault as well as the owner, and the person injured was aboard for purposes of navigation, if such elements are supposed to be of importance in the discussion in the *Imbrovek* case. "The law of the place of the wrong determines whether the claim for damages survives the death of the wrongdoer." *Ormsby vs. Chase*, 290 U. S. 387. The place of the wrong here to be considered is shipboard, navigable waters, rather than the territorial limits of Florida. Sailors, passengers and guests on vessels in Florida waters are under maritime law as regards the safety of the vessel and the care due by master or owner, rather than under the law of Florida. A proper uniformity requires that it be so. The duties of ship and owner to those on board do not change as the ship passes invisible State boundaries. In a common law State like Georgia, a cause of action for a tort does not survive the death of the tortfeasor before suit. *Frazier vs. Georgia R. R. Co.*, 101 Ga. 77; *Smith vs. Jones*, Admr., 138 Ga. 716; though the contrary is held in Florida. Had the injuries here in question occurred on a night trip from Brunswick, Ga., to Jacksonville, Fla., the survival of personal liability would, if State law controls, depend on whether the gas was inhaled in Georgia or Florida waters, and probably

could not be determined at all. We are of opinion that principles of admiralty law govern, uniform at least throughout the United States, and the principle touching [fol. 870] survival heretofore declared is that a personal liability for an injury to person due to negligence does not survive the death before libel of the tortfeasor. If the law is to be changed, it ought to be by Act of Congress.

Nothing can be made of the argument that appellees could have sought a common law remedy in a Florida court if this proceeding had not stopped them. Yeiser died a citizen of Ohio, and there his executor was appointed and resides. It is not apparent how a Florida court would obtain personal jurisdiction. But if it could, the suit would still have been for a maritime tort, and appellees would have no rights different from what they would be in a court of admiralty, the remedy alone being different. *Messel vs. Foundation Co.*, 274 U. S. 427; *Chilentes v. Luckenbach S. S. Co.*, 247 U. S. 372.

The interlocutory decree is affirmed as to the liability of the ship, but is reversed in so far as it holds that the personal liability of Yeiser survived his death. Damages may be assessed against the vessel and her proceeds only. The costs of this appeal will be equally divided between appellant and appellees.

HUTCHESON, Circuit Judge, dissenting:

My only difference with my brothers is upon whether Yeiser's death caused an abatement of the action in personam against him. Both by statute and by the common law of Florida,¹ personal injury actions arising in [fol. 871] that state do not abate. Congress has not chosen to enact any law relative to the survival of actions in personal injury cases arising on navigable waters of a state. The answer to the case is to be found in traditional principles of maritime law accepted from the English High Court of Admiralty by the federal courts under the constitutional

¹ See Secs. 4211, 7047, 7048, C. G. L., 1927; *Waller v. First Savings & Trust Co.*, (Fla., 1931) 138 So. 780; *Granat v. Biscayne Trust Co.*, (Fla., 1933) 147 So. 850; *Penn v. Pearce*, (Fla., 1935) 163 So. 288; *International Shoe Co. v. Hewitt*, (Fla., 1936) 167 So. 7; and *State v. Parks*, (Fla., 1937) 175 So. 786.

grant of power, or in the common law, and for this case, that is, the law of the state in whose waters the injury occurred for there is no general common law. I concede that the traditional common law rule was that a personal right or action abated upon the death of either party and that following that traditional common law rule, there are Admiralty precedents to the same effect. On the authority of *The Harrisburg*, 119 U. S. 199, I deny that there is any traditional maritime law to apply to this case, and point out that since Admiralty in this matter merely follows the common law, there is no basis here for the holding that in Admiralty the cause abates.

It is the crux of the appellant's argument that the common law principle "*actio personalis moritur cum persona*" has been adopted as a part of the general maritime law. The Supreme Court, in *The Harrisburg*, *supra*, cited by the appellant, denies this. The suit was for wrongful death, and the argument was made that the maritime law itself afforded such a right of action, but Mr. Chief Justice Waite, observing that "the maritime law, as accepted and received by maritime nations generally, leaves the matter untouched," chose, in the absence of a state statute to the contrary, to follow the common law, because no country should adopt "a different rule on this subject for the sea from that which it maintains on the land." 119 U. S. 199, at 213. In *re Statler*, D. C. N. Y., 31 F. (2d) 767, involving death claims under the Seamen's Act of 1920, is to the same effect. There, the alleged tortfeasor died before the trial. It was held that the action abated because the [fol. 872] statute must be interpreted in the light of the traditional common law rule of survival which was the rule in that state.

The import of these decisions and of those that follow is that the common law and not an independently existing system of maritime law furnishes the applicable principles relative to survival of actions in admiralty. The fact is that the maritime law, as applied either in the federal courts or by the old High Court of Admiralty in England, has never been considered as a complete and all-inclusive body of substantive law distinct from and coextensive with the common law itself. The maritime law may be, and, as a matter of practice, is often supplemented by the common law. This "common law" to which we refer can only be the law of the

state; "there is no federal general common law." *Erie R. Co. v. Tompkins*, 304 U. S. 64, at 78.

Accordingly, admiralty courts have uniformly given effect to the wrongful death statutes of the various states without regard to whether the action was originally brought in the state court at common law (*Steamboat Co. v. Chase*, 16 Wall. 522; *Sherlock v. Alling*, 93 U. S. 99) or in the federal court in admiralty (*The Hamilton*, 207 U. S. 398; *La Bourgogne*, 210 U. S. 94; see *The Corsair*, 145 U. S. 335). Some of these early decisions have been superseded by the Death on the High Seas Act of March 30, 1920, c. 111, 46 U. S. C. A., Secs. 761-768, but the principle they represent has never been repudiated. The Act does not alter the prior law insofar as the Great Lakes and the territorial waters of the states are concerned. The law of the state where the injury occurs determines whether or not the claim for damages survives. *Ormsby v. Chase*, 290 U. S. 387; *Restatement of Conflict of Laws*, Sec. 390. That this law is declared by the highest court in a decision rather than by the legislature in a statute is not a matter of federal concern. *Erie* [fol. 873] *R. Co. v. Tompkins*, *supra*. Therefore, the decision of the Supreme Court of Florida in the Waller case should be determinative of the issue here in controversy, unless the case is within the scope of the doctrine of uniformity of admiralty law in its characteristic features.

With respect to those activities which are directly connected with commerce and navigation in their interstate and international aspects, it has been held, though in the opinion of the writer, with doubtful wisdom and logic, that the law must be uniform throughout the United States, and the laws of the various states are not competent to modify or vary it. *Southern Pac. Co. v. Jensen*, 244 U. S. 205; *Clyde S. S. Co. v. Walker*, 244 U. S. 255; *Peters v. Veasey*, 251 U. S. 121; *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149. The rationale of the cases holding invalid the application of state workmen's compensation laws to maritime employees is that a state law cannot affect a maritime contract or matters incidental thereto. But, illustrating the narrow and tenuous authority of these cases, is the well settled rule that though the contract is maritime if it is local in character and has no direct relationship to navigation, state compensation laws are applicable to determine rights and liabilities and to regulate the method of seeking relief, because they do not interfere with any characteristic feature of the maritime

law. *Grant Smith-Porter Co. v. Rhode*, 257 U. S. 469; *Miller's Indemnity Underwriters v. Braud*, 270 U. S. 51; *Carlin Constr. Co. v. Heaney*, 299 U. S. 41.

A tort action for wrongful death has no relationship to navigation, no characteristic features of maritime laws are distorted thereby, and there is no necessity for uniformity. *Western Fuel Co. v. Garcia*, 257 U. S. 233. With regard to its effect upon any characteristic feature of maritime law, there is, there can be, no distinction between a death act and [fol. 874] a survival statute. To modify and supplement by a state statute or by the common law of a state in whose waters the injury occurs, the rule applied in admiralty courts when following the common law does not prejudice the uniform administration of maritime law, 257 U. S. 233, at 242, and since in matters of survival of actions admiralty follows the common law, there is no need for uniformity. The early case of *Crapo v. Allen*, Fed. Case, No. 3360, though correctly decided on its facts,² represents in its general statements, a view contrary to that herein expressed, that "the right of action by the general maritime law dies with the person injured" and that the right of survival of actions for torts, created by Massachusetts local law, should not be enforced. Subsequent cases have not sustained those general views. No valid distinction from the point of view of uniformity can be made between a survival action and an action of wrongful death of which the books are full. Here the injury occurred in the territorial waters of Florida and there can be no doubt that had a common law action been brought in Florida, it could have been maintained. 2 C. J. S., Sec. 62, page 124.

It is certainly, I think, unreasonable to say that though the action would have survived if brought at law, appellees may, by an injunction out of Admiralty, be prevented from asserting their right either at law or in Admiralty.

In *The Hamilton*, 146 Fed. 727, the court said of a death action: "We cannot doubt that had suits been brought for these deaths in the courts of Delaware, the plaintiff would have succeeded. By the action of the petitioners they are enjoined. Every consideration, based on equity and natural

² The injury sued for occurred not in the territorial waters of Massachusetts but on the high seas, and there was no proof as in *The Hamilton*, that Massachusetts was the state of the ship's flag.

[fol. 875] justice impels us to hold that it was not the purpose of the limited liability act to enable vessel owners to force claimants into the Admiralty, and thus avoid claims which are valid and enforceable at common law. The intent was to limit the liability, not to destroy it."

This decision and its reasoning was affirmed in the Supreme Court, 207 U. S. 398, which also adequately disposes of the concern of the majority over interference with uniformity. Said the court: "Enforcement of the death statute would not produce any lamentable lack of uniformity as courts everywhere must enforce the laws which govern the transaction, even if they are different from those governing the local transaction of the jurisdiction in which they sit." Finally, I see no breach of Admiralty uniformity here at all. All admit that the cause of action against the yacht is not affected by the death of its owner³ and that there was a cause of action against Yeiser in his life time. There is no effort as there is in the death cases, to introduce into Admiralty a new and strange kind of cause of action. There is merely an effort to have Admiralty continue, notwithstanding the death of the tortfeasor, to enforce the cause of action which it, as well as the common law of Florida, gave the plaintiff and it, following the common law of Florida, may continue to give him.

It seems perfectly clear to me that Admiralty should not here follow the traditional common law rule of an action abating with the death of the wrongdoer in view of its almost universal disapproval in and disappearance from [fol. 876] the jurisprudence of American states and particularly in view of the fact, that there is now no general federal common law but only the common law of the state where the particular court is sitting. Particularly should we not follow this ancient and discredited rule, in the face of the considerations of humanity, of reason and of common

³ "A maritime lien arising from personal injury is a right of property on the vessel and therefore does not die with the person." *The Ticelime*, 221 Fed. 409, aff'g 208 Fed. 670; *The Lafayette*, 269 Fed. 917, 927. In *Crapo v. Allen*, 1 Sprague 184, Fed. Cas. No. 3360, the action held to have abated was in personam. In *The City of Belfast*, 135 Fed. 208, decision was based on a State statute as allowing survival of the action. Cf. *The Student*, 238 Fed. 936, aff'd 243 Fed. 807; *Benedict*, 5th Edition, Volume 1.

sense, together with the current of authority which now runs in favor of its abolition.

The District Judge was correct in refusing limitation of liability.. Having once acquired jurisdiction, the admiralty court was competent to give all claimants affirmative relief. The judgment should be affirmed.

I respectfully dissent from the reversal.

[fol. 877]

JUDGMENT

Extract from the Minutes of June 21st, 1940

No. 9218

ALMA CHAMBERS, as Executrix of the Estate of Henry C. Yeiser, Jr., as owner of the American Yacht "Friendship II",

versus

CHARLOTTE CROSS JUST AND ANNE ELISE GRUNER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the interlocutory decree of the said District Court in this cause be, and the same is hereby, affirmed as to the liability of the ship; and that this cause be, and it is hereby, reversed in so far as it holds that the personal liability of Yeiser survived his death. Damages may be assessed against the vessel and her proceeds only. The costs of this appeal will be equally divided between appellant and appellees;

It is further ordered, adjudged and decreed that the appellant, Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., as owner of the American Yacht "Friendship II", be condemned to pay one half of the costs of this cause in this Court, and that the appellees, Charlotte Cross Just and Anne Elise Gruner, be condemned, in solido, to pay one half of the costs of this cause in this Court, for which execution may be issued out of the said District Court.

"Hutchenson, Circuit Judge, dissents."

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[fol. 898] ORDER DENYING REHEARING

Extract from the Minutes of July 31st, 1940

No. 9218

ALMA CHAMBERS, as Executrix of the Estate of Henry Yeiser, Jr., as owner of the American Yacht "Friendship II",

versus

CHARLOTTE CROSS JUST AND ANNE ELISE GRUNER

As neither of the judges who concurred in the judgment of the court in the above numbered and entitled cause is of the opinion that the petition for rehearing should be granted it is ordered that said petition be and the same is hereby Denied.

[fol. 899] MOTION AND ORDER STAYING MANDATE—Filed August 8th, 1940

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 9218

ALMA CHAMBERS, as Executrix of the Estate of Henry C. Yeiser, Jr., as Owner of the American Yacht "Friendship II," Appellant,

vs.

CHARLOTTE CROSS JUST and ANNE ELISE GRUNER, Appellees

Motion to Stay Issuance of Mandate Until October 1, 1940

Charlotte Cross Just and Anne Elise Gruner, appellees herein, respectfully show to this Court that they are preparing their petition for writ of certiorari which they intend to file in the Supreme Court of the United States, to have reviewed the decision and judgment of the United States Circuit Court of Appeals for the Fifth Circuit filed in the above entitled cause, and respectfully pray that an order be entered herein staying the issuance of the mandate herein

until October 1, 1940; and that the said order staying the said mandate be extended after October 1, 1940, until disposition of this cause by the United States Supreme Court upon the filing herein of a certificate or some equivalent showing from the Clerk of the United States Supreme Court, that within the said date application for a writ of certiorari has been duly made to the United States Supreme Court upon or prior to October 1, 1940.

Dated at Miami, Florida, this August 6, 1940.

(Signed) Walter R. Mayne, St. Louis, Missouri,

(Signed) M. L. Mershon, (Signed) W. O. Mehrtens,
Miami, Florida, Proctors for Appellees.

Fordyce, White, Mayne, Williams & Hartman, St. Louis, Missouri, Evans, Mershon & Sawyer, Miami, Florida, Of Counsel.

Receipt of a true copy of the foregoing motion acknowledged, this August 6, 1940.

Kirlin, Campbell, Hickox, Keating & McGrann,
Loftin, Calkins, Anderson & Scott, (Signed) by
A. L. McCarthy, Proctors for Appellant.

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[fol. 900] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH DISTRICT

No. 9218

ALMA CHAMBERS, as Executrix of the Estate of Henry C.
Yeiser, Jr., as Owner of the American Yacht, "Friendship
II", Appellant,

versus

CHARLOTTE CROSS JUST and ANNE ELISE GRUNER, Appellees

On Consideration of the Application of the Appellees in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of

this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 8th day of August, 1940.

(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 901]

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,

United States Circuit Court of Appeals, Fifth Circuit.

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 863 to 900 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 9218, wherein Alma Chambers, as Executrix of the Estate of Henry C. Yeiser, Jr., as owner of the American Yacht, "Friendship II," is appellant, and Charlotte Cross Just and Anne Elise Gruener are appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, Vols. I. and II., numbered from 1 to 862, are identical with the printed record upon which said cause was heard and decided in the said United States Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 14th day of August, A. D. 1940.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit. (Seal.)

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[fol. 897] SUPREME COURT OF THE UNITED STATES.

ORDER ALLOWING CERTIORARI—Filed October 21, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1702)

